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Current Topics.

The Judicial Committee.

THE fact that the Judicial Committee of the Privy Council has again been sitting in two Divisions, requiring the attendance of most of the Lords of Appeal, and thus necessitating the temporary suspension of the sittings of the House of Lords as an appellate tribunal, is an interesting reminder that, despite the efforts in certain of the Dominions to restrict, if not to abolish altogether, the right of appeal, this right is still largely taken advantage of, and, indeed, is regarded as highly valuable among our kin beyond the sea. Every now and again the utility of this appeal has been canvassed, but, though in some respects the right has been restricted, the flow of appeals is still considerable. The appeal has proved particularly valuable in questions arising in Canada between the Dominion and the different Provinces, but, perhaps, the most touching instance of its value is furnished by the story which the late LORD HALDANE used to tell of a traveller who had penetrated into a remote part of India where he found the natives engaged in offering up a sacrifice to a far-off but all-powerful god, who had just restored to the tribe certain lands of which it had been deprived by the government of the day. On asking the name of the god who had thus restored to them their property, the answer he received was this: "We know nothing of him but that he is a good god, and that his name is the Judicial Committee of the Privy Council." As we learn from Professor BERRIEDALE KEITH'S exhaustive work on the "Dominions as Sovereign States," the condition for an appeal of right is normally that the matter in dispute is of the value of £500 or upwards, or that the appeal involves directly or indirectly some claim or question respecting property or other civil right of that value; but, he adds, that in some instances a lesser value may entitle an appellant to bring his case before the Judicial Committee.

One Judgment Court.

As is generally known, in proceedings before the Judicial Committee, there is not, as in other tribunals composed of more than one judge, more than one judgment delivered. We use the word "judgment" as bringing out what we mean although fully conscious that the word is a misnomer, seeing that what the Committee say and what in other courts would be styled the judgment, is merely a statement of the reasons arrived at for advising HIS MAJESTY what answer is to be given to the litigating parties. This invariable practice of the Judicial Committee has sometimes been cavilled at as less satisfactory than the rule obtaining in the House of Lords and other appellate courts where each member gives, or, at least, is entitled to give, his opinion, but there is much to be urged in favour of one judgment only in appeals. The lay parties care little or nothing about an elaborate discussion of legal problems by the different judges, each of them it may be arriving at a different conclusion. Dissenting judgments, as the late LORD SUMNER used to say, are to be read for professional edification but nothing else, and, in fact, they merely cause confusion where clarity is specially to be desiderated. However that may be, it is scarcely likely that the time-honoured custom by which each member of the court is entitled to give his individual views on the subject discussed will be departed from, although, unfortunately in not a few cases, with the result of raising doubts in the minds of the profession as to what the law on the particular subject really is.

Prison Commissioners' Report, 1937.

THE Report of the Commissioners of Prisons and the Directors of Convict Prisons for the year 1937, which was recently published by H.M. Stationery Office (Cmd. 5868, price 2s. net), contains a mass of statistical information unsuitable for detailed treatment here. Certain features of the report may, however, be briefly indicated, particularly as the subject is much in the public eye at the present time. The total number of receptions of men—always, as it pointed out, greater than the number of different persons received into prison since many, after finishing one sentence, are sent to prison again in the course of the year—was 42,014 in 1937, compared with 41,680 in 1936. The chief increases were in committals on remand not followed by sentences of imprisonment, committals in default of fines imposed and committals to Borstal Detention. Committals by civil process for failure to comply with orders for payment of moneys continued to fall, though the decrease of 171 recorded last year compared with 1936, is far less spectacular than that shown by comparison of the figures for 1935 and 1936, when a decrease of 1,871 was recorded. This was, of course, largely due to the coming into force on 1st January, 1936, of the Money Payments (Justices Procedure) Act, 1935. The receptions of women during 1937 numbered 5,035—a decrease of 354, compared with the figure for 1936. Receptions on convictions increased by 228 in the case of men, and decreased by 323 in the case of women. It is of some interest to note that the stricter definition of vagrancy effected by the amendment of s. 4 of the Vagrancy Act, 1824, has given an additional impetus to the steadily decreasing number of convictions for sleeping out. The figure for 1937 was 64, the lowest on record—a remarkable drop from that of 3,239 recorded for 1913.

Recidivism.

In the report for 1936, figures were given showing that the greater incidence of recidivism among women was due to the preponderating influence of imprisonment for drunkenness. The present report shows that in regard to offences against the intoxicating liquor laws 61 per cent. of the male receptions and 82 per cent. of the female receptions were known to have been in prison before. Corresponding figures in regard to other offences are 50 and 44, respectively. The report states that since 1930 a record has been kept of the subsequent history of all those received into prison on conviction of "finger-printable" offences for the first time. From tables given in an appendix it appears that of 47,010 prisoners received into prison for the first time during the years 1930–35, 37,429, or nearly 50 per cent., have not, so far as is known, returned to prison for a second time up to the end of 1937. Percentages relating to those without previous proved offences, and those with previous proved offences are 85.7 and 63.5, respectively. It is stated that the work of New Hall Camp has continued satisfactorily since the last report. There are eighty prisoners permanently resident there, and in addition a party of about twenty is taken daily to and from Wakefield Prison to the camp. With reference to those serving their first sentence at Wakefield the percentage of those discharged since 1931 who had not been re-convicted up to the end of 1937 is 85.6, the corresponding figure in the case of those with previous offences being 55.5. It is stated that the convict population continues to fall. The daily average of men, including those retained in local prisons, fell from 1,516 in 1936 to 1,438 in 1937. On the other hand, sentences of five years and upwards rose by 20 to 103. The daily average number of men serving sentences of preventive detention was 97, and of women 6. Reference is made to the report for 1937 of the National Association of Discharged Prisoners' Aid Societies, which records not only an increasing activity among Aid Societies and an expanding interest in their work, but also co-operation between the local societies and with the social services. This has led both to a reduction of overlapping and an increase in efficiency. The association, it is indicated, dealt with 197 special cases which were referred to it during the year in question, mainly by local societies. In 138 cases new employment for the ex-prisoner was found and assistance was also given in other ways. A further 144 cases were dealt with on personal application by ex-prisoners for help and advice.

Railway and Canal Commission: Annual Report.

The forty-ninth Annual Report of the Railway and Canal Commission with appendix for the year 1937 has recently been published by H.M. Stationery Office (Cmd. 5855, price 6d. net). Appendix I contains a full list of applications pending on 1st January, 1937, and of the cases pending on 31st December, 1937, with the orders made in each case. Appendix II contains a statement showing the balance of cash and securities standing to the credit of the Commission on the date last named. The report states that orders have been made under the Railways (Valuation for Rating) Act, 1930, in sixty-seven appeals from the decision of the Railway Assessment Authority in the Matter of the first Railway Valuation Roll relating to the London and North Eastern Railway Company. Mention is made in the report of the judgment delivered by the Commission in favour of the London, Midland and Scottish Railway Company in an application by the Luton, Dunstable and District Coal Merchants Association, which alleged that certain changes contemplated by the railway company would deprive them of "reasonable facilities" for handling their coal. Another application was that by the Tinsley Park Colliery Company, Ltd., and Stewart and Lloyds, Ltd., for the confirmation of a voluntary partial amalgamation scheme. The commissioners, having heard evidence which satisfied them that the proposed amalgamation was in the national interest and that the terms of the scheme were fair and equitable to all persons affected, confirmed it. The Commission also considered and granted an application by the Bolsover Colliery Company, Ltd., for the right to search for and work coal under a considerable area of land in Derbyshire on the ground that it was expedient in the national interest that such rights should be granted. Reference is also made to the application of Archibald Russell, Ltd., which was dismissed by the Commission on a point of law. The applicants appealed to the Second Division of the Court of Session, whose finding will necessitate a further hearing by the Commission. The report concludes with a brief reference to the possible effect upon the powers of the Railway and Canal Commission Court of the Coal Bill then under debate in Parliament.

The Liberty of the Press: A Judicial Statement.

At the conclusion of the hearing of a recent divorce petition, in the course of which counsel had asked that the name of a man referred to should not appear in the Press, Langton, J., made some observations concerning the general position. He had, he recalled, had occasion to remind the petitioner—and it was as well that it should be thoroughly understood—that he had no control whatever as to what should be published by the Press. The freedom of the Press in this country was just as important a question of liberty as any other of the liberties of the subject, and Parliament had been neither slow nor supine in laying down what should and what should not be reported so far as that Division of the High Court was concerned. The Legislature had made it a matter of special concern how far the ordinary complete freedom of the Press should be curtailed. The learned judge observed that he had no word whatever to say about that. It was only his business in the matter to see that the statutes were properly respected and he had no jurisdiction whatever outside those statutes. On the other hand, there were cases where, in his judgment, it was unnecessary to recite in public all the extraneous facts of a particular case. That was a matter for his personal discretion.

Pit Heaps.

The Public Health (Coal Mine Refuse) Bill was read a second time in the House of Commons last Friday week. Mr. Lawson, who moved the second reading, indicated that the measure provided that an accumulation or deposit of refuse from a coal mine which was liable to spontaneous combustion should be liable to be dealt with summarily, and that it substituted for the permissive provisions contained in existing public health legislation an enactment that was imperative. The evils of the burning pit heap were referred to by a number of speakers who took part in the debate. These are, indeed, unquestionable, but there seems to be much to be said for the suggestion put forward by one member that the problem of coal mine refuse ought to be dealt with as a matter belonging essentially to that industry and not by means of a Public Health Act. In view of the research which was taking place, it should not, it was urged, be impossible for the Minister of Mines to establish, after a not long time, a set of rules to deal with the treatment of pit heaps after consultation with the industry and the local authorities. Some difference of view was manifested as to how far the method of putting the refuse back underground would provide a practical solution of the problem, and the debate also elicited the argument that the question should be regarded from the long-term point of view, so that, in the light of modern knowledge, means could be found of preventing the formation. Mr. Bernays, Parliamentary Secretary to the Ministry of Health, said that he was not surprised at the welcome which the Bill had received, for no one could possibly defend the continuance of pit heaps, if only practical means could be found for their abolition. It was urged, however, that the problem should be kept in perspective. Every colliery heap was not a burning heap. A general investigation was in progress to ascertain if

practical means were available for putting out fires and making heaps in a new way. More than half the heaps in the country had been visited and remedial suggestions made, but the complete survey would take another eighteen months. While Mr. BERNAYS did not think the Bill would do all that Opposition members thought it might, he was convinced that the House would do well to give it a second reading. If there was to be an end of the scandal of the burning pit heaps, there must, he said, be co-operation between everybody concerned.

Road Accidents: Ministry of Transport or Home Office?

AN interesting proposal was recently made by LORD COTTENHAM when giving evidence before the House of Lords Committee on the Prevention of Road Accidents. He urged that the Ministry of Transport should be abolished and that its duties should be taken over by a technical department of the Home Office, under a permanent head. Transport matters, he said, were inseparably bound up with police work, and it was the Home Office that was finally responsible for the police. He accordingly suggested that, within the framework of that Department, there should be a road traffic committee, a rail traffic committee and a waterway traffic committee, each with a permanent head. LORD COTTENHAM also referred to the public's standard of driving, which he regarded as deplorable and unnecessarily low. This, he thought, could be raised considerably in three, four or five years. As a remedy for the existing state of things, he would train and license all driving instructors, and make it impossible for anybody to drive unless he or she had been taught by a licensed instructor. It was, he said, more dangerous to drive a car to-day than to fly an aeroplane, and nobody was allowed to go off the ground without being taught by a qualified instructor. LORD COTTENHAM'S evidence was the last to be heard by the committee, which has since met in private to survey the mass of evidence given before it. At the time of writing it has not been decided whether the committee will desire to hear further evidence, and the date of the next meeting has not yet been fixed.

Local Government Superannuation Act, 1937: Minister's Decision.

IN our issue of 12th November we drew attention to a number of decisions of the Minister of Health on points arising under the Local Government Superannuation Act, 1937, and the Local Government Superannuation (Administration) Rules, 1938. A further decision given since that date may be briefly noted. The employee appealed against the decision of a county borough council in so far as it failed to recognise a period of service with a board of guardians, including a period prior to the applicant's attaining the age of eighteen years, as contributing service for the purposes of the Act of 1937. The applicant urged that inasmuch as he made contributions under the Poor Law Officers' Superannuation Act, 1896, and he was not entitled to a refund of those contributions, the period in question should be reckoned as contributing service: and that, if not so reckoned, the whole period and not, as the local authority decided, only that part of it subsequent to the attaining by the applicant of the age of eighteen, should be reckoned as non-contributing service. It appeared the applicant voluntarily resigned his post in April, 1927, and did not on 12th November, 1928, hold an office which was superannuable under the Act of 1896. According to the Minister's decision the only persons who under the Act of 1937 may become entitled to reckon as contributing service previous employment under the Act of 1896 are "transferred poor law employees," "transferred rating employees" and "registration officers" (s. 40 (1)). The applicant did not fall within any of those classes, while the definition of "service" so far as it applied to the case precluded the reckoning of any period of employment prior to the attaining the age of eighteen. The appeal was accordingly dismissed.

Recent Decisions.

IN *Mellor and Others* v. *Australian Broadcasting Commission (New South Wales)* (*The Times*, 23rd November), the Judicial Committee of the Privy Council granted the petitioners, who carried on the business of publishers of band music, special leave to appeal from a judgment of the Supreme Court of New South Wales in Equity, dismissing the petitioners' action for an injunction to restrain the respondents from broadcasting musical works, the copyright of which was in the petitioners, and for an account of profits made in broadcasting such works, or alternatively, for damages. LORD ATKIN intimated that the matter seemed to raise an important quesion of principle.

In *Sunderland* v. *Barclays Bank Ltd.* (*The Times*, 25th November), DU PARCQ., L.J., sitting as an additional judge of the King's Bench Division, held that, in the circumstances, a bank manager was justified in thinking that the plaintiff did not object to his offering to the plaintiff's husband an explanation which might satisfy the husband that the latter's complaint of discourteous treatment by dishonouring a small cheque drawn by his wife was unjustified, and that the bank had not committed a breach of duty in informing the husband that cheques drawn on the wife's account were going to a bookmaker.

In *Attorney-General* v. *Rochdale Canal Co.* (*The Times*, 25th November), BENNETT, J., held that the supply of water by the defendants from their canal at different points within 100 yards therefrom for use by a railway company in a "pick up" water trough was *ultra vires*. The defendants were authorised, under s. 37 of the Rochdale Canal Act, 1899, to supply "water for condensing or raising steam to mills or works within 100 yards of the canal," and the learned judge intimated that the word "works" was not apt to describe the permanent way of a railway.

In *British Industrial Plastics, Ltd.* v. *Ferguson and Others* (p. 970 of this issue), the Court of Appeal (SLESSER, MACKINNON and FINLAY, L.JJ.) upheld a decision of PORTER, J. (as he then was), who awarded the plaintiffs £15,000 damages against D., a chemist formerly in their employment, for breach of contract by the disclosure to his subsequent employers of the secrets of the plaintiffs, and dismissed a claim for damages for alleged conspiracy to use the plaintiffs' process and to manufacture in competition with the plaintiff.

In *R.* v. *De Verteuil: R.* v. *Whelan* (*The Times*, 29th November), the Court of Criminal Appeal (LORD HEWART, C.J., and CHARLES and HUMPHREYS, JJ.) gave reasons, on Monday, for dismissing appeals against convictions at the Central Criminal Court of conspiracy, obtaining money by false pretences, and incitement to bribe public officers. As was noted in these columns, the appeals were dismissed on 1st November, and when it was stated that reasons would be given later.

In *Craig* v. *Dover Navigation Co., Ltd.* (mentioned in *The Times*, 29th November), the Court of Appeal (SLESSER, CLAUSON and GODDARD, L.JJ.) reversed a decision of a county court judge and held that a seaman who died from yellow fever and malaria caused by a mosquito bite in the course of a voyage to a mosquito-infested place had received injuries arising out of his employment within the meaning of the Workmen's Compensation Acts, and that compensation was therefore payable to his mother, the sum of £180 assessed by the county court judge being awarded. Leave to appeal to the House of Lords was given.

In *Dalton* v. *Adelphi Club, Ltd., and Others* (p. 972 of this issue), a Divisional Court (LORD HEWART, C.J., and CHARLES and MACNAGHTEN, JJ.) reversed a decision of a metropolitan police magistrate and held that "stud poker" was an unlawful game within s. 4 of the Gaming Houses Act, 1854. See *Jenks* v. *Turpin*, 13 Q.B.D. 505.

The Criminal Justice Bill.

THE issue of penal reform has been recently brought into the foreground by the introduction in the House of Commons by the Home Secretary of a comprehensive Criminal Justice Bill. The new measure, which has now reached its second reading, deals with a variety of subjects. In the words of the preamble, it seeks "to amend the law relating to the probation of offenders, the supervision of persons by probation officers and the functions of probation officers; to provide new methods and to reform existing methods of dealing with offenders and persons liable to imprisonment; to amend the law relating to the management of prisons and other institutions and the treatment of offenders after sentence and of persons committed to custody; to consolidate certain enactments relating to the matters aforesaid; and for purposes connected therewith."

In its eighty sections and five schedules it contains some striking proposals for the reform of the methods of dealing with persons found guilty of offences, and takes account of some of the most advanced suggestions for the reform of the present penal system. Many of the proposed amendments, for instance, those with regard to preventive detention, embody criticisms which have for some time past been commanding a considerable measure of general approval. Others, like those abolishing penal servitude and hard labour, have already evoked some controversy. A popular cartoonist has pictured the Home Secretary nailing up a poster headed "Prison Reform and Good Citizenship," with the "Bad old treadmill days" shown in the foreground. On the other hand, Sir Arthur Greer, in a letter to *The Times* of 22nd November, emphasised the necessity for a deterrent element in punishment and uttered a warning against the "very real danger . . . that the criminal classes will regard prison as a reward rather than a punishment," although he subsequently wrote that he had not intended to criticise the Bill, which at the time of writing he had not read. It is easy to predict that the Bill will not reach the statute book without some degree of modification.

The proposals with regard to the amendment of the law relating to the probation system give effect to the recommendations made by the Departmental Committee on Social Services in Courts of Summary Jurisdiction (Cmd. 5122 of 1936). The term "probation," if the Bill becomes law, will apply only to the placing of an offender under the supervision of a probation officer, and will not apply to the discharge or binding over of offenders to be of good behaviour (cl. 18). The court will be able to make a probation order irrespective of the age of the offender if it "is of the opinion that having regard to the circumstances, including the nature of the offence and the character and home surroundings of the offender, it is expedient to place him under supervision." The court may include in the order provisions as to residence, abstinence from intoxicating liquor and other matters to secure the co-operation of the offender. All courts will be enabled to deal with cases without proceeding to conviction. Notable in the new probation scheme is the duty of every probation committee, under cl. 2 (1) (*a*), to appoint for their probation area a sufficient number of probation officers and to ensure that at least one probation officer who is a man, and one probation officer who is a woman, shall be appointed for or assigned by the committee to each petty sessional division. It is also provided that out of moneys provided by Parliament there shall be paid such sums as the Secretary of State, with the approval of the Treasury, may direct in respect of the expenditure of any body approved by the Secretary of State in the training of probation officers or of persons for appointment as probation officers. The past successes of the probation system as demonstrated by statistics compiled by the Home Office in November, 1937, justify the proposals to carry the system a step further.

Some of the more important clauses in the Bill deal with the proposed substitution of other methods than those of imprisonment for dealing with young offenders convicted of such offences as are dealt with by courts of summary jurisdiction. Clause 17 provides that a person appearing to the court to be under sixteen years of age shall not be sentenced to imprisonment, and also imposes heavy restrictions on the power of courts to sentence to imprisonment persons appearing to be between the ages of sixteen and seventeen. It likewise limits the powers of courts of summary jurisdiction to impose imprisonment on persons between the ages of seventeen and twenty-one. It also provides for the future abolition of the power of courts of summary jurisdiction to impose imprisonment on persons under twenty-one years of age, the abolition to be effected by an Order in Council when other adequate methods of dealing with such offenders have become available.

Remand centres are provided where young offenders remanded or committed for trial in custody may be sent for observation, as well as custody, and also State remand homes for persons under seventeen requiring special medical observation.

Another reform which may prove useful is that contained in cls. 12 and 29, giving power to the Home Secretary to provide "compulsory attendance centres," where offenders between the ages of seventeen and twenty-one may be required to attend, for occupation and instruction, during their leisure hours. Power is also to be given to counties and county boroughs to provide "juvenile compulsory attendance centres" for offenders between the ages of twelve and seventeen. Courts of summary jurisdiction may order attendance at such a centre for a maximum period of six months in any case where they have power to inflict imprisonment or a fine. This alternative method of dealing with young offenders fills a great need. Magistrates have been frequently warned of the evil effects of short sentences, particularly on young persons, and yet, in a single typical year, 1935, over 10,000 persons were sent to prison for periods not exceeding fourteen days, 1,707 of whom were young persons under the age of twenty-one (Report of Prison Commissioners for 1935, Cmd. 5430, p. 18).

A further salutary alternative to imprisonment or Borstal is provided by the "Howard houses" (cls. 13 and 30) where persons between the ages of sixteen and twenty-one may be sent for "residential control" outside their working hours. It will be open to all criminal courts to employ this form of sentence in lieu of imprisonment, and the residence will be for six months from the date of the order. Courts of summary jurisdiction will also be given power to award sentences of Borstal training on persons between the ages of sixteen and twenty-one. It has been questioned whether this power is not too great for courts of summary jurisdiction, but as the Home Secretary pointed out on the second reading of the Bill, those courts already have great powers, such as those of sentencing a boy or girl to prison for six months and in some cases for twelve months and sending a boy or girl to an approved school for three years.

Dealing with the punishment of offenders generally, cl. 32 provides simply that no person shall be sentenced by a court to corporal punishment and every enactment conferring such power upon a court shall cease to have effect. Clause 47 proposes that the law relating to corporal punishment as a method of dealing with certain serious prison offences should be amended. The proposed abolition of corporal punishment will no doubt meet with some opposition, and it can rightly be pointed out that in the case of robbery with violence, for which sentences of corporal punishment are by far the most frequently used, there were 1,414 convictions in the years 1904 to 1913, when it was used in 3·4 per cent. of the cases, and only 656 in the years 1926 to 1935, when it was used in 35·8 per cent. of the cases. Criminal practitioners know that, in practically every case, the person so convicted cannot be further brutalised by a whipping except where he is a young

person, and that there is a great deal to be said for the retention of the penalty as a deterrent in the case of robbery with violence. It is right to add, however, that there was evidence before the recent Departmental Committee that it was no more effective as a deterrent than imprisonment. The second reading of the Bill has revealed that this is still a highly controversial topic.

The proposed abolition in cl. 33 of the legal distinction between imprisonment and penal servitude amounts to very little more than the recognition of a *fait accompli*. Most prisoners of experience prefer penal servitude as affording somewhat milder conditions than imprisonment. This reform, however, involves the abolition of the ticket-of-leave system, under which persons on licence from penal servitude are required to keep the police informed of their place of residence, but it is further provided (cl. 35) that persons repeatedly convicted of serious crime shall keep in touch with a society approved by the Home Secretary, and on failure to do this they shall become liable to report to the police. Clause 33 also proposes the abolition of sentences of hard labour and the substitution of ordinary imprisonment. It further proposes the abolition of the statutory prison divisions. Thus, even if the mere term "hard labour" is all that remains of the crank and the treadwheel, it is doomed to disappear into the bad past where the crank and treadwheel belong.

The much criticised provisions of Pt. II of the Prevention of Crime Act, 1908, with regard to the "preventive detention" of "habitual criminals," are to be amended. The Bill proposes in cl. 34, in accordance with the recommendations of the Departmental Committee on Persistent Offenders, to substitute provisions enabling courts of assize and quarter sessions to pass, in lieu of and not in addition to, sentences of imprisonment, sentences of corrective training from two to four years on persons between the ages of twenty-one and thirty, and of preventive detention of from two to four years on persons over thirty. In the latter cases, where there are records of repeated crime of a serious nature, many of them as the Home Secretary said on the second reading almost too horrible to mention, the penalty may be increased to ten years.

The Bill also provides (cl. 38) for improved facilities to courts of summary jurisdiction to obtain a medical report on the mental condition of the offender without remanding him in custody. Courts of summary jurisdiction will also, if the Bill becomes law, be given power to make an order for the treatment of an offender who is certifiable as insane in the same way as they can at present make an order for the treatment of an offender who is mentally defective. It also provides that the terms "criminal lunatic" and "criminal lunatic asylum," should be abolished and that there should be substituted "State mental patient," and "State mental hospital," respectively (cl. 67).

Whatever alterations the Bill will undergo before it receives the Royal Assent, it can safely and uncontroversially be predicted of it that it will mark a further step forward in the history of the enlightened treatment of offenders. In its present form the least estimate that can be placed on its worth is that it is significant of the fact that the public conscience is ever alert to remove defects in the penal system.

The Permanent Court of International Justice has elected the following to be members of the Chamber for Summary Procedure for the period 1st January to 31st December, 1939: Dr. Guerrero, President, Sir Cecil Hurst, Count Rostworowski, M. Fromageot, Dr. Anzilotti.

The Minister of Transport has appointed Mr. Edgar Macassey to be Chairman of the Traffic Commissioners for the West Midland area, in succession to Mr. Trevor Morgan, who has been appointed Chairman of the Western area. He has also appointed Mr. F. S. Eastwood to succeed Mr. J. Farndale as Chairman of the Yorkshire area on the latter's retirement on 31st December.

The Landlord and Tenant Act, 1927.

THE difficulties confronting tenants under the above Act have been illustrated in two recent cases. In *Watts* v. *Field and Another*, at Bromsgrove County Court, the plaintiff claimed a renewal of the lease of No. 84 High Street for not less than five years on the ground that, if his lease were not renewed, any compensation would not be an adequate reward for loss of goodwill. The plaintiff was the owner of a chemist's business, which had been established in 1875 and was sold in 1881 to one Corbett, who owned it (with the exception of the period from 1896 to 1902) until 1925. The rent was then £70, and the business was conducted by Mr. Corbett's widow until 1927, when the plaintiff became manager. In 1929 the plaintiff bought the business, and lived on the premises, for which he paid £80 a year, having become assignee of a lease which had two and a half years unexpired. A new lease was then entered into for ten years from November, 1929, at a rent of £80 until March, 1932, and £90 thereafter until November, 1939. Having applied for a renewal, the plaintiff was only offered an annual tenancy at £100 a year. His case was that this was not adequate security of tenure, and the loss of goodwill (in the event of his moving elsewhere) would amount to £500. A chartered accountant gave evidence as to the progress of the plaintiff's business in the last nine years, and an estate agent stated that there were no other premises suitable in Bromsgrove, which was a one-street town for shopping purposes. The defendants' case was that they owned Nos. 81, 82, 83, 84 and 85, High Street, and they carried on a tailoring business at No. 85. The whole of this property was in mortgage, and it would not be consistent with good estate management to grant a new lease of No. 84, occupied by the plaintiff. Instead, it was proposed to transfer the tailoring business to Nos. 82 and 83 (where the office work was done) and to sell Nos. 84 and 85 as one lot. It would not be economic to sell No. 85 alone. A chartered accountant and an estate agent both gave evidence that it would be a prudent course to sell Nos. 84 and 85, in order to finance the modernisation of the rest of the defendants' property. His Honour Judge Roope Reeve, K.C., held that the granting of a new lease would not be inconsistent with good estate management. On the question of goodwill, however, no claim had been made for compensation, and the plaintiff was not entitled to compensation for goodwill arising from the exertions of his predecessors, e.g., Mr. Corbett. The only issue related to the goodwill under the lease expiring next November, and, although there had been an accretion to the personal goodwill (owing to the exertions of the plaintiff) this alone did not entitle him to compensation. It was necessary to ascertain what (if any) had been the accretion to the benefit obtained by the landlords. There was no evidence of any such accretion, and no case had been made out for the grant of a new lease. No right to compensation had been proved, and even if such a right had been established the case was not one in which a new lease might reasonably have been ordered. It would have been a greater hardship to compel the defendants to abandon their scheme for dealing with their property than to compel the plaintiff to seek other premises. Judgment was therefore given for the defendants, with costs.

It is to be noted that in *Whiteman-Smith Motor Co., Ltd.* v. *Chaplin* [1934] 2 K.B., at p. 48, the present Lord Chancellor (then Maugham, L.J.) pointed out that the addition to the value of the premises must be the direct result of the carrying on of the trade or business by the tenant or his predecessor, and any value attributable exclusively to the situation of the premises must be excluded. For the same reason, an addition to the value due to an increase in the population or a change in trading conditions, or a shortage

of suitable premises, or other like conditions, must also be excluded.

In *Garland* v. *Sutton-in-Ashfield Urban District Council*, at Mansfield County Court, the claim was for £150 as compensation for the goodwill of a shop. The plaintiff gave up possession in March, 1938, after the defendants had bought the site for road-widening. The scheme had been approved by the Minister of Health and by the Minister of Transport, but the time for completion (June, 1938) had been extended. It was originally intended to demolish the shop, but the whole of the site was not required for road-widening. A vacant site would be left, to which goodwill would attach by reason of the plaintiff's premises. When the improvement was made the defendants would thus derive benefit from the goodwill. The defendants' case was that no improvement could be made until the property had been pulled down. No compensation was therefore payable, in view of s. 4 (1) (*g*) of the above Act. His Honour Judge Hildyard, K.C., held that the defendants had resumed possession for their own purpose—road-widening. No compensation was accordingly payable, and judgment was given for the defendants, with costs.

Company Law and Practice.

Actions against a Company on behalf of a Class.

Actions on behalf of minority shareholders' actions are a very common form of proceeding, so common in fact that one is apt to forget that they form an exception to a well defined general rule and that they cannot properly be brought at all unless they fall within the exception. Such an action, though in form it is against the company which is a necessary defendant, is in substance an action by and for the benefit of the company. The general rule prescribes that the company is itself the proper plaintiff in an action which is brought for its benefit, but this rule can be relaxed in circumstances which make it impossible for the company to be the plaintiff even though justice may require it. The company may be controlled by the votes of a proportion of its members whose personal interests are opposed to that of the company and who are accordingly anxious to use their voting power in the company in such a way as to prevent the company from righting a wrong to their own personal disadvantage. They can prevent the company from initiating proceedings, and therefore, the general rule has to be relaxed in such cases in order to allow an action to be brought by some other interested party. The proposed plaintiff must carefully consider whether the circumstances justify him in taking proceedings and the most important matter for his consideration is whether he has taken all other possible steps to rectify within the company that which he proposes to complain of to the court. I want to consider this week one or two of the cases which show most clearly the burden which is on the plaintiff to show that the action is properly constituted and maintainable as an exception to the rule in *Foss* v. *Harbottle*. There is an early case of *Morris* v. *Morris* [1877] W.N. 6, in which Vice-Chancellor Hall indicates some of the essential pre-requisites to the launching of an action of the kind under discussion. In form the action was by a single plaintiff on behalf of herself and all other the shareholders in a certain company, the defendants being two other persons and the company; in substance the action was a suit for redemption. The report is a short one, but it appears that the learned Vice-Chancellor held that the plaintiff had not by her statement of claim brought her case within the exception to the general rule or shown that she was entitled to relief in the name of the company. It was incumbent on her to allege and prove that she had exhausted all reasonable means of obtaining a remedy through the company. The company has in general meetings a tribunal which is *primâ facie* the proper one for the ventilation of disputes of this kind and the court will only interfere in cases where it is shown that special circumstances have rendered the special tribunal unfit to deal with the matter. An aggrieved shareholder should, therefore, first take steps to find out who the shareholders are for the purpose, if necessary, of requisitioning a meeting of the company. In *Morris* v. *Morris*, *supra*, the learned Vice-Chancellor said that the plaintiff was bound to show that "she had exhausted all means in reference to calling a meeting," and on the facts before him he found that "she had not done enough to entitle her to assume that she could act for the company." It is no doubt very proper in certain circumstances for a shareholder to bring an action for the benefit of a company which is so compassed about by evildoers that it cannot itself do so, but before embarking on any presumptuous chivalry of this modern kind the shareholder must find out whether the company is really incapable of looking after its own affairs. Such, I take it, is the lesson taught by *Morris* v. *Morris*, *supra*, and other cases, to some of which I will now refer.

Mason v. *Harris*, 11 Ch. D. 97, is a different kind of case illustrating the same principles. It was a suit by two shareholders in a company against the managing director, two other directors and the company for the purpose, *inter alia*, of setting aside for fraud a sale by the managing director to the promoters of the company. It was alleged that the managing director and the other two defendant directors refused to take any steps with reference to the matter complained of; that they formed a majority of the board; that the two directors were under the control of the managing director; and that no remedy could be obtained inside the company because the managing director had a preponderant voting power. The managing director demurred on the technical ground that the action was improperly framed, as the company itself should have been the plaintiff. Vice-Chancellor Malins, thinking himself compelled by a technical rule to do so, allowed the demurrer, but the Court of Appeal reversed this decision and held that the demurrer could not be sustained. It will be observed that the matters complained of constituted, if proved, a fraud. This being so, they were not matters in respect of which a majority could by its sanction bind a minority. Furthermore, it was alleged that by reason of the distribution of the voting power, it was impossible to get the company to impeach the alleged fraudulent transaction. Bearing these matters in mind, let us turn to the judgment of Sir G. Jessel, M.R., which begins on p. 107 of the report. The learned Master of the Rolls refers first to the general rule and explains the reasons for allowing exceptions: "As a general rule, the company must sue in respect of a claim of this nature, but general rules have their exceptions, and one exception to the rule requiring the company to be plaintiff is that, where a fraud is committed by persons who can command a majority of the votes, the minority can sue. The reason is plain, as unless such an exception were allowed, it would be in the power of a majority to defraud the minority with impunity. The learned Master of the Rolls then referred to the evidence, from which he was able to say that this was a case in which the company could not be looked to to put the matter right, and accordingly it was held that the company need not be the plaintiff, and that the suit could continue as constituted. Before leaving this case, it is interesting to note that James, L.J., deals with the contention which had been urged in argument that the court could direct a meeting to be called at which the corrupt shareholders should not have a vote. The learned Lord Justice thought that if the court had power to do this, it would be the best way of dealing with cases of this kind. It is a little difficult to see how the court could prevent a "corrupt" shareholder from voting at a meeting to be held before any corruption had been proved against him. But, however that may be, the point does not arise, as the learned

Lord Justice decided that the court had no power to give any directions of that kind.

Mason v. *Harris*, *supra*, was a case in which there were allegations of fraud, but it is not necessary that a fraud should have been committed before a shareholder can start an action on behalf of himself and other shareholders. There is a statement of the law by Lindley, M.R., in *Alexander* v. *Automatic Telephone Company* [1900] 2 Ch. 56, which puts the position very clearly. It is not necessary to go into the facts of that case which was a complicated one. Reviewing the evidence, the learned Master of the Rolls came to the conclusion "that a breach of duty by the directors of the company and the other shareholders in it" had been established. He then continued: "It is necessary, however, to consider the form of the action, and the relief which can be given. The breach of duty to the company consists in depriving it of the use of the money which the directors ought to have paid up sooner than they did. I cannot regard the case as one of mere internal management which, according to *Foss* v. *Hardbottle* and numerous other cases, the court leaves the shareholders to settle among themselves. It was ascertained and admitted at the trial that, when this action was commenced, the defendants held such a preponderance of shares that they could not be controlled by the other shareholders. Under these circumstances, an action by some shareholders on behalf of themselves and the others against the defendants is in accordance with the authorities and is unobjectionable in form: see *Menier* v. *Hooper's Telegraph Works*, L.R., 9 Ch. 350. An action in this form is far preferable to an action in the name of the company, and then a fight as to the right to use its name. But this last mode of procedure is the only other open to a minority of shareholders in cases like the present."

It is not necessary in every case for the plaintiff to show that the matter complained of has, in fact, been put before a general meeting of the company and that the company has, by the vote of its members, refused to redress the injury. If the persons accused of doing wrong are shown to have control of the voting power, then it would be merely an empty parade to go through the manœuvres of calling a meeting. The law does not prescribe that the plaintiff should enact a solemn farce. Again, there may have been a meeting which has substantially approved a transaction which it is later sought to impeach. In such a case it would not be necessary for another meeting to be held provided that action followed within a short time of the meeting which had previously been held. It may even be able to show from other acts and matters that the company is clearly not minded to interfere. In any case where the plaintiff is in a position to produce some sort of evidence showing that the company refuses to act or is prevented from acting, then an individual shareholder can properly bring a representative action.

I do not want to encumber this article with too many references to cases or extracts from judgments, but those who may wish to pursue the general principles which I have been considering could not do better than peruse the judgment of Sir G. Jessel, M.R., in *Russell* v. *Wakefield Waterworks Company*, 20 Eq. 474, at pp. 479 *et seq.* They will there find a clear exposition of the general rule which is derived from *Foss* v. *Harbottle*, followed by the reasons for and examples of the exceptions to that general rule, with references to the more important of the earlier decisions. It is interesting to see how this form of action originated in defiance of a well-defined general rule which, if left to operate without modification, would in many particular instances have produced injustice by leaving aggrieved persons without any means of bringing their grievances before the court. We discern in all the cases the conflict between the strict legal view that a company is as much a distinct person as any of its members and the obvious fact that it is the members who are interested in the welfare of this inanimate and artificial person. In this instance, the conflict has been resolved by a sensible rule of procedure but it is important always to bear in mind that a shareholding suing in a representative action is only being allowed to do so on the footing that there is something to be looked into which cannot be tested in any other way. The court, therefore, must first be satisfied that the plaintiff is in a position to bring an action for the benefit of the company, even though the company is on the surface opposed to this course and is a party to the action as a defendant.

A Conveyancer's Diary.

What is a "Building Lease" within the S.L.A., 1925?

THE question which I propose to discuss this week is: What is a "building lease" within the meaning of the S.L.A., 1925, and particularly whether an ordinary repairing lease comes within the meaning of that expression.

I must first refer to the relevant sections of the Act.

The power of granting leases is contained in s. 41, which enacts that "a tenant for life may lease the settled land . . . for any term not exceeding—(i) in the case of a building lease 999 years."

Section 44 is as follows:—

"(1) Every building lease shall be made partly in consideration of the lessee or some person by whose direction the lease is granted, or some other person, having erected or agreeing to erect buildings, new or additional, or having improved, repaired or agreeing to improve or repair buildings or having executed or agreeing to execute on the land leased an improvement authorised by this Act or in connection with building purposes.

"(2) A peppercorn rent or a nominal or other rent less than the rent ultimately payable may be made payable for the first five years or any less part of the term."

Sub-section (1) would certainly seem to include an ordinary repairing lease: "Every building lease shall be made partly in consideration of the lessee . . . or some other person . . . agreeing to improve or repair buildings . . ." Bearing in mind that an ordinary repairing covenant in a lease imposes an obligation to put into repair, and not merely keep in repair, it certainly looks as though such a covenant makes the lease a "building lease" within the section. For example, suppose buildings which are in a very bad state of repair are demised by a lease which contains the ordinary repairing covenant. In such a case there is clearly a liability on the part of the lessee to put the buildings into a proper state of repair and thereafter to keep them in that state.

Then, sub-s. (1) concludes with "or in connection with building purposes."

Now turn to s. 117 (i) which reads:—

"'Building purposes' include the erecting and the improving of and the adding to and the repairing of buildings; and a 'building lease' is a lease for any building purpose or purposes connected therewith."

The learned editors of "Wolstenholme and Cherry's Conveyancing Statutes," in their note to this sub-section (12th ed., vol. 2, p. 1182), observe: "It is conceived that for a lease to be a building lease, the erecting or repairing, etc., of buildings must be the purpose or one of the purposes for which it is granted, and that what is commonly called a *repairing lease* is not a building lease within the meaning of the Act, save in so far as repairs are treated as improvements in the 3rd Sched."

But is it not one of the "purposes" of an ordinary repairing lease to ensure that the buildings shall be put and kept in a proper state of repair? It seems to me that it is. An owner of buildings wishes them to be kept in repair or they will

deteriorate in value and he must either do the repairs himself or throw the burden upon someone else. He achieves his "purpose" of having the buildings kept in repair by granting a "repairing lease" under which the obligation to repair is undertaken by the lessee. I do not suppose that it was intended to include such a lease in the definition of a "building lease," but looking at the wording of the definition it is difficult to see how it is excluded.

There is little authority of assistance. The case most nearly in point is *Re Daniel's Settled Estates* [1894] 3 Ch. 503.

That was an application to the court by a person entitled for life to the income of settled estates subject to a trust for sale and was therefore under s. 63 of the S.L.A., 1882, and s. 8 of the S.L.A., 1884, empowered to make a building lease subject to the sanction of the court. The applicant proposed to grant a lease of a house for thirty years, the lessee covenanting to lay out a sum of money on specified improvements and repairs within three months and also during the term to repair and maintain the messuage and all additions thereto. North, J., held (it is not stated on what ground) that the proposed lease was not a building lease within s. 8 of the S.L.A., 1884 (which is the corresponding section to s. 44 (1) of the S.L.A., 1925).

The Court of Appeal took the contrary view. Lindley, L.J., said: "I think it would be putting too narrow a construction on the clause to confine the words 'agreeing to improve or repair buildings' to an agreement to expend generally whatever money may be required for improving or repairing and not to lay out a fixed sum in improvements or repairs."

It is not quite clear whether the learned lord justice considered that an agreement to repair generally (without mentioning improvements) would have been sufficient.

Lopes, L.J., also held that the lease in question was a "building lease."

The Court of Appeal, however, refused to sanction the granting of the lease on the ground that the repairs were "slight repairs" such as the tenant for life should have done himself. From that it would appear that the lease was an ordinary repairing lease.

A more recent case which, however, turned upon another point under s. 44 (1) of the S.L.A., 1925, is *Re Grosvenor Settled Estates, Duke of Westminster* v. *McKenna* [1933] 1 Ch. 97.

Under a settlement dated in 1901 the Duke of Westminster was tenant for life in possession of the Grosvenor Estates, comprising property in London and including 8 Carlos Place, which was subject to a lease for ninety-nine years, of which fifty-seven years were unexpired.

The tenant for life proposed to accept a surrender of the existing lease and to grant a new lease of the premises in the form of a draft exhibited to an affidavit filed on his behalf. The proposed lease was to be for 999 years from June, 1932, and to reserve the same rent as the existing lease, and was to contain a covenant as follows:—

> "And will as and when reasonably necessary and particularly when reasonably required by the estate surveyor so to do rebuild in a proper and workmanlike manner and to the reasonable approval in all respects of the said estate surveyor the whole or such part of the demised buildings as may require to be rebuilt . . ."

No time was prescribed within which the rebuilding must be commenced.

A summons was taken out to determine whether the tenant for life had power to grant such a lease and was supported by evidence (which was not challenged) that it was in the interest of good estate management to grant long leases, the lessees being under covenant to rebuild when necessary rather than to sell the freehold.

It was argued that s. 44 (2), giving liberty to reserve a peppercorn or nominal rent for the first five years, assumed that rebuilding, etc., would be done or at any rate commenced within that time.

Eve, J., held that the tenant for life had power to grant the lease in the form proposed.

His lordship, dealing with sub-s. (2) of s. 44, said that although a peppercorn or nominal rent might be reserved for the first five years of the term, that, in his opinion, was not sufficient to raise an implication that a period of five years for the execution of the works ought to be required in the lease in the absence from the Act of any other indication to that effect. The learned judge considered that the omission of any such limit of time from the Act was deliberate. His lordship found support for that view by referring to the C.A., 1881, and the S.L.A., 1882. The powers of mortgagees and mortgagors, whilst in possession under the former Act, to grant a building lease for ninety-nine years imposed a time limit of five years within which the buildings must be erected, but the powers of granting building leases for similar terms conferred on tenants for life under the S.L.A., 1882, were not subject to any such limitation. When the L.P.A., 1925, and the S.L.A., 1925, enlarged the maximum term from ninety-nine to 999 years in the case of leases by mortgagors or mortgagees and by tenants for life respectively, the same distinction was preserved. On those grounds the learned judge held that the proposed lease was a "building lease" within ss. 41 and 44 of the S.L.A., 1925.

That case does not, of course, help us regarding the question whether "an ordinary repairing lease" is a "building lease" within the Act.

Landlord and Tenant Notebook.

Occupation in Expectation of Lease.

"It would, doubtless, be prudent to advise persons never to enter on any premises until a regular lease has been formally executed; but it would be quite impossible for this advice to be acted upon in practical life," said Cleasby, B., in his judgment in *Dawes* v. *Dowling* (1874), 22 W.R. 770. Most of us will have come across cases in which intending tenants have taken possession before negotiations have been concluded and trouble has ensued when they were broken off; for, as the learned baron so well perceived, there are many optimists and much impatience in the world, and those who point out possible consequences of optimism and impatience must be treated as giving counsel of perfection.

The trouble is usually settled, when litigation is resorted to, by an action for use and occupation in which the intending tenant comes off second best. The action for use and occupation, which lay at common law and was "established by statute" (the Distress for Rent Act, 1737, s. 14), if not actually designed to meet these cases, certainly covers them. The two most typical instances of the state of affairs, briefly described above, and of the application to that state of affairs of the action for use and occupation are, I think, *Coggan* v. *Warwicker* (1852), 3 Car. & Kir. 40, and *Fawkner and Rogers* v. *Booth* (1893), 9 T.L.R. 558 and 10 T.L.R. 83, C.A.

In *Coggan* v. *Warwicker* both parties were packers by trade, and the plaintiff owned a warehouse suitable for that business. Their first transaction was a service agreement, the plaintiff employing the defendant and paying him by way of salary a share of the profits. Then the defendant suggested that, his connection being larger than that of the plaintiff's, it would be a good thing to put the business in his, the defendant's name; if that were done he would be willing to pay half the profits; or a rent of £75 a year; or he might pay more; or he would pay rent weekly. The idea appealed to the plaintiff, who said, however, that he would not require the rent weekly. The parties then resorted to the solicitor who had drawn the old service agreement and instructed him to draw a lease, and

while this was being attended to the plaintiff gave the defendant possession. The draft lease was made and submitted to the parties a few weeks later; it provided for a term of seven years, which the defendant considered too long. The plaintiff was willing to make it five years, and the lease was then drawn accordingly, but the defendant refused to sign and left the premises just over two months after the date on which he had taken possession. The action was for damages for use and occupation during that period. The jury found "that the defendant was let into possession without any agreement and provisionally with a view to an intended agreement," and were thereupon directed to return a verdict in the plaintiff's favour.

It will have been observed that the deficiency which prevented negotiations from being agreement in the above case concerned the term. This is a very common oversight: parties negotiating for a tenancy consider, first, the premises, then the rent; the second of these considerations becomes the subject of haggling, and when the figure is settled, the question of term—if not length, the equally important matter of date of commencement—is lost sight of, or it may be that it is thought probable that it will settle itself.

Still, it would be interesting to know what took place at the solicitor's office in this case. One hopes that he at least pointed out that "instructions" to draw a lease were not complete unless the term were provided for.

In *Fawkner and Rogers* v. *Booth* the facts are none too fully set out, but it is clear that the circumstance left out of account in this case was the necessity for a licence from the freeholder of the premises concerned. The defendant was General Booth of the Salvation Army (who, incidentally, gave his name to another leading case on the law of landlord and tenant). The said Army negotiated for a lease of premises in the City of London for storage of uniforms, etc., substantial alterations being necessary. The plaintiffs were sub-lessees of these premises, and on the 26th February their agents acknowledged and "confirmed" a letter received from the defendant's agent which contained "heads of agreement" and plans. Neither letter made any mention of a licence from the freeholders, which was necessary; and the Army at once entered into what counsel called "contingent occupation" and set about making the alterations. They also displayed a large banner across the front of the premises, and it was this that caused the freeholders to take action. Negotiations were then conducted as to what might be displayed, and when that failed, the freeholders sought and obtained an injunction. This was in June. The defendant's men left, but his agent *retained the keys*, ignored a notice to quit in fourteen days, served in September, but finally left, after a writ had been served, on the 17th December. The action was brought for (1) the cost of restoring the premises; (2) damages for use and occupation in respect of the period before the notice to quit; (3) mesne profits in respect of the period since. The Defendant counter-claimed for the cost of the useless alterations. As in *Coggan* v. *Warwicker*, the jury found that there was no contract between the parties. It was held that the Army should have left when, but not before, the injunction was granted; the defendant was therefore liable for use and occupation from June till December but not before. The learned judge of first instance also decided that the defendant was liable, either in contract or in tort, for the cost of restoring the premises to their original state, the heads of agreement having provided for reinstatement. But the Court of Appeal considered it impossible to infer any agreement by the Army to restore the premises if no licence were obtained, and varied the order. There appears to have been some evidence that the plaintiffs had insisted on the alterations, as if the "heads of agreement" made this their right rather than the defendant's; this being so, they could hardly, as the Master of the Rolls observed, claim for dilapidations on the strength of them.

The intending tenant may, however, not have to pay for his "beneficial occupation" if the failure of negotiations to result in a lease is not due to their failure to produce agreement, but to the intending landlord's inability to perform that agreement. In *Rumball* v. *Wright* (1824), 1 C. & P. 589, the claim was for damages for not accepting a lease. The defendant had entered into possession under a complete agreement which entitled him to a ninety-nine-year lease on his laying out £600 in building. This agreement was executed, as regards the intending landlords, in a curious way. It was signed, not by the plaintiff personally, but by his son, who described himself in the document as signing, not for his father, but for his sister (who was entitled to an annuity, charged on the premises). However, the evidence established that the son had had the plaintiff's authority; and it was also proved that the father had acted upon the agreement and that the defendant had carried out the building operations and that he had *received rents* from sub-tenants. But inability to produce the annuitant as a co-grantor was fatal to any claim for damages for breach of agreement to take a lease. It was then argued that, the defendant having received rents, he should at least be liable for damages for use and occupation. But it was held that the circumstances in which he had taken and enjoyed possession were a complete answer to this. For he was not put in as a tenant, but to occupy till a lease was granted; and the agreement under which he occupied did not provide for any payment by him.

Damages may, of course, be recoverable when a building tenant breaks an agreement though it does not provide for rent before the grant of a lease. In an old case, *Banister* v. *Usborne* (1796), 2 Peake N.P. 76, assignees in bankruptcy of a builder who would have been entitled to a ninety-nine-year lease took possession and occupied for a time; they were held liable for use and occupation in respect of that time, though the agreement with the bankrupt did not provide for rent.

Our County Court Letter.

THE DEFINITION OF A "1936 MODEL" MOTOR CAR.

In *W. Martin & Co. Ltd.* v. *Ruddock*, recently heard at Bournemouth County Court, the claim was for damages for breach of warranty, viz., £12 2s. 6d. The plaintiffs were motor dealers and their case was that, having advertised a Lincoln car for sale, they agreed to sell it to the defendant, who offered in part exchange a Packard. The latter was represented to be a 1936 model, upon which the plaintiffs allowed £210, leaving a balance due of £150. The Packard was subsequently found to have been registered in 1935, so that the allowance should have been £60 less. An adjustment for licences reduced the over-payment to the above amount claimed. The defendant's case was that the car was invoiced to him by a reputable firm as a 1936 model. The motor show was held in the previous October, and, as the models for the following year were then shown, they were rightly described as 1936 models. It was conceded on behalf of the plaintiffs, that this was an accurate statement of the position. His Honour Judge Cave, K.C., observed that, if a manufacturer or dealer could sell a 1935 car to a customer as a 1936 model, the customer could do the same to the dealer. On the evidence, it was impossible to give damages for breach of warranty or misrepresentation. Judgment was therefore given for the defendant, with costs.

CAUSE OF ACTION ON FAILURE TO COMPLETE.

In a recent case at Bournemouth County Court (*Trim* v. *Foster*) the claim was for £13 in respect of the use and occupation of a house. The plaintiff's case was that in January, 1937, the defendant verbally agreed to purchase the house for £900. A deposit of £25 was paid, but as the defendant would

not be in funds until the 24th June, 1938, the completion was postponed until that date. At the date of the contract, the house was let in two flats, one of which became empty in March, 1937. The defendant was then let into possession of that flat, and not only remained in possession until June, 1938, but also collected the rent of the other part sub-let. In May, 1937, a written contract was submitted to the defendant, but she suggested a reduction of the purchase price to £830, and also made complaints about the drains. Eventually the contract was repudiated, and the plaintiff claimed £19 in respect of use and occupation at £1 a week, less £6 paid on account. It was submitted that the amount was recoverable, on the basis that the relationship between the parties was that of landlord and tenant. His Honour Judge Cave, K.C., held that that relationship could not exist between vendor and purchaser. Instead of being a claim for rent, the cause of action was apparently for damages for breach of contract. An adjournment was granted for amendment of the claim and a reconsideration of the defendant's position in the altered circumstances.

RETURN OF MONEY ON BROKEN ENGAGEMENT.

In a recent case at Bristol County Court (*Wilcox* v. *Francom*) the claim was for £35 10s. as money had and received for the use of the plaintiff. The parties had been engaged to be married, and, during the twelve years of the engagement, the plaintiff had admittedly handed to the defendant various sums, which she had eventually placed in a bank. The plaintiff's case was that he handed over the money partly for safe custody, as his work-mates were inclined to borrow from him. Another reason was to enable the defendant to buy articles and materials for a future home. On the engagement being broken off, neither of the above conditions could be fulfilled, and the defendant's right to retain the money had therefore ceased. The defendant's case was that the money was a gift and was to be used as much for her own future as the plaintiff's. Although he had at one time claimed a return of the money, his final remarks (on parting) implied that he had given up any claim to it. His Honour Judge Wethered held that the money was handed over for safe custody and not as a gift. The original sum was £32, of which £8 had been returned. Further sums had been spent on various articles, leaving a balance of £19 15s. 1d., for which amount judgment was given for the plaintiff, with costs.

See *Cohen* v. *Sellar* [1926] 1 K.B. 536.

Obituary.

MR. B. C. BROUGH.

Mr. Bertram Charles Brough, Stipendiary Magistrate for the Staffordshire Potteries District, died at Stafford, on Tuesday, 22nd November. Mr. Brough, who was called to the Bar by the Inner Temple in 1892, had been Stipendiary Magistrate for the Potteries for the past twenty-nine years.

MR. P. CAULDWELL.

Mr. Paul Cauldwell, B.A., Lond., retired solicitor, died at Wandsworth Common, S.W., on Monday, 21st November, at the age of seventy-seven. Mr. Cauldwell, who was admitted a solicitor in 1889, was for twenty-seven years solicitor to the Battersea Borough Council.

MR. C. F. L. CLARKE.

Mr. Charles Frederick Loriston Clarke, solicitor, a partner in the firm of Messrs. Bush, Clarke & Bush, of Bristol, died recently in his seventieth year. Mr. Clarke was admitted a solicitor in 1893, having been awarded the Clement's Inn, Daniel Reardon and John Mackrell Prizes. He was for many years a partner in the firm of Messrs. Pomeroy, Tanner and Clarke, before becoming a partner in the firm of Messrs. Bush, Clarke & Bush in 1931.

MR. W. H. STONE.

Mr. William Henry Stone, solicitor, head of the firm of Messrs. W. H. Stone & Co., of Exeter, died in a nursing home at Bath, on Tuesday, 15th November. Mr. Stone was admitted a solicitor in 1911.

MR. W. E. WILKINSON.

Mr. William Elmslie Wilkinson, LL.D. Lond., solicitor, of Bedford Row, W.C., and Maida Vale, W., died recently at the age of forty-eight. Mr. Wilkinson, who was admitted a solicitor in 1911, was the author of several well-known legal text books including works on the Rent Restrictions Acts and the Shops Acts. He was also an occasional contributor to this journal.

Reviews.

The Coal Act, 1938, with the Coal (Registration of Ownership) Act, 1937. By F. A. Enever, M.C., M.A., LL.D., of Gray's Inn, Barrister-at-Law, Legal Adviser and Registrar to the Coal Commission. 1938. Royal 8vo. pp. xl and (with Index) 496. London: The Solicitors' Law Stationery Society, Ltd. 37s. 6d. net.

The drastic changes effected by the Coal Act, 1938, may be regarded as the culmination of a series of legislative provisions, beginning with the Mines (Working Facilities and Support) Act, 1923, which have profoundly affected the law relating to coal mines and have rendered a sound work on the subject a present necessity for practitioners. The legal adviser and registrar to the Coal Commission is to be congratulated in the production of such a work. The statutes above referred to, the Mining Industry Act, 1926, the Coal Mines Act, 1930, and the Coal (Registration of Ownership) Act, 1937, have resulted in a complex body of legislation of formidable dimensions which is not rendered easier of comprehension by having been dictated partly by considerations affecting the mining operations themselves and partly by considerations of Government policy. These Acts are set out and usefully annotated in the volume under notice, together with the relevant statutory rules and orders, and the forms for use in connection with the Acts of 1937 and 1938. The able introductions (extending over some 120 pages) to the new Acts will be found particularly helpful, and they successfully achieve the author's professed object which is to deal with the problem of assimilating the five Acts concerned and to afford a practical guide to the combined legislation.

Books Received.

"*Taxation*" *Manual.* Compiled by Barristers and Experts under the direction of Ronald Staples, Editor of "Taxation." 1938. Demy 8vo. pp. xvi and (with Index) 328. London: Taxation Publishing Co., Ltd.; Sir Isaac Pitman & Sons, Ltd. Price 10s. 6d.

The Local Land Charges Register. By Robert F. Parrott and Thomas Alker. 1938. Crown 8vo. pp. viii and (with Index) 144. London: Sir Isaac Pitman & Sons, Ltd. 6s. net.

Traumatic Mental Disorders in Courts of Law. By William A. Brend, M.A. (Camb.), M.D., B.Sc. (Lond.), of the Inner Temple, Barrister-at-Law. 1938. Demy 8vo. pp. vii and (with Index) 104. London: William Heinemann (Medical Books), Ltd. 7s. 6d. net.

The Coal Act, 1938, and Associated Statutes, Rules and Forms. By David Bowen, one of His Majesty's Counsel. 1938. Royal 8vo. pp. xlvii and 466 (Index, 26). London: Hamish Hamilton (Law Books), Ltd. Price 42s.

POINTS IN PRACTICE.

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Voluntary Conveyance Reciting Grantees—Entitled in Equity—Stamp.

Q. 3613. A client of ours has contracted to purchase a house, and an abstract has been delivered. This contains, amongst other things, a voluntary conveyance by A to X, Y and Z as tenants in common, dated the 4th March, 1920, which recites only that X, Y and Z had become entitled in equity to the property as tenants in common in equal shares, and had requested A to convey the property to them, which he had agreed to do. The document is stamped with a 10s. stamp, and not adjudicated. Can our client, the purchaser, in view of *Re Soden and Alexander*, or any other authority, accept this title without further question? If not, what further evidence of the trusts or the correctness of the stamp duty should he require?

A. Unless A was, on the face of the previous documents, a trustee or personal representative, in which case it would seem unnecessary to question the stamp, the opinion is given that the purchaser is entitled to ask for adjudication. It will be noticed that in the case of *Re Soden and Alexander's Contract* [1918] 2 Ch. 258, referred to in the question, counsel stated that the vendors were willing to have the stamp adjudicated, and the judge specifically said that any difficulty presented by s. 74 (2) of the Finance Act, 1910, was got over by the vendor's willingness to have the stamp adjudicated.

Enforceability of Covenant.

Q. 3614. A purchased a plot of land from B, together with a right of way over B's private road adjacent to the plot and covenanted with B, his heirs and assigns, and for the benefit of B's adjoining land not to allow motor cars to stand in the private road so as to cause an obstruction of the highway and would prosecute offenders. Since then the said private roadway has been taken over as a road repairable by the inhabitants at large. Can B still enforce the covenant against A or is A released from his obligation?

A. The covenant has been rendered impossible of performance by the destruction of the subject-matter, viz., the private road. The latter has ceased to exist, and the highway by which it has been replaced is subject to the statutes governing roads, from the Highway Act, 1835, onwards. The result is that A is released from his obligation.

Doctors' Account.

Q. 3615. We are acting for the executor and trustee of a deceased lady, and, after payment of legacies, the residue of the estate is to be divided between three institutions, and, amongst the accounts alleged to be due, there is a doctors' account for £81 5s. for "professional attendance, April to August, 1937," and, as we anticipate some question by the residuary beneficiaries as to the reasonableness of this account, we have asked the doctors to supply details of the account, and up to the present they decline to do this and state that they never furnish detailed accounts. We should be pleased if you could give us some authority that our contention is correct, that the doctors must furnish some detailed account of attendances, medicine, etc., before they can insist on payment of the amount they claim.

A. The account is apparently rendered by a firm of general practitioners for attendance over a period, i.e., it is not in respect of an operation by a specialist. Unless the doctors can prove an agreement by the testator to pay a lump sum, or an annual retaining fee (either of which is improbable), they are bound to furnish detailed accounts. There is no direct authority for this, but the test is whether they could obtain judgment in court on particulars of claim as brief as the account rendered. The judge would require evidence of, e.g., the number of visits, the time of day or night at which the visits were paid, whether at the surgery or at the patient's house, and (in the latter event) the mileage. Particulars of drugs supplied would also be required, especially if there were expensive injections. A detailed account, specifying the above items, should be requested, and payment should be withheld until such an account has been supplied and verified.

Governing Director.

Q. 3616. The sole proprietor of a business of an approximate capital value of £15,000 proposes to convey the same to a company to be formed by him and the purchase price to be satisfied by the issue of 15,000 ordinary shares. The proprietor then proposes to distribute these 15,000 ordinary shares, or the major part of them, in certain proportions between his widow and children, and to make them directors of the company. The proprietor proposes to retain the full controlling rights of the company as managing governing director with power to suspend directors and to fix their fees and to deal with the property of the company in any way he thinks proper, and in particular to retain the right to draw what salary he may think proper each year for his own use. The business earns, at the moment, approximately £3,000 per annum, and the proprietor proposes that his salary as governing director should be £2,000 per annum. If the proprietor lives for three years he hopes thus to save death duties payable upon his estate, which consists entirely of the business, but at the same time to retain whatever annual sum he may desire to draw out of the business. It is desired to have your views as to whether there is any technical difficulty in doing this and in particular whether the rights of a governing director can be made so full that a majority of the shareholders cannot in any circumstances upset them.

A. The three-year period, in connection with death duties, only applies to gifts. In the case of a *bonâ fide* sale to a company, death duties would not be payable on its assets, even if the vendor died within three years. Such duties, however, would be payable, in the present case, on the value of the 15,000 shares at the date of his death, whether before or after the expiration of three years. The rights of a governing director can be so defined by the articles that a majority of the shareholders cannot in any circumstances upset them, i.e., he can retain an overriding vote. In the event of such powers being exercised in fraud of the company, an application can be made to the court for a declaration that the purported exercise of the power is invalid, and for an injunction to restrain the governing director. It would be illegal, for example, for him to denude the company of its assets in furtherance of some object not within the memorandum and articles. Again, if the profits did not justify the payment of the stipulated salary, the latter would have to abate, in spite of its being specified in the articles.

To-day and Yesterday.

LEGAL CALENDAR.

28 NOVEMBER.—On the 28th November, 1862, a dramatic scene was enacted at the Old Bailey. The sessions had witnessed the closing events of an appalling outbreak of gangster violence in the streets of London. In open day, or in well-lighted streets, men had been attacked and robbed by ruffians with a ferocious violence which in many cases had left them physical wrecks with no hope of recovery. Now eighteen of the criminals stood convicted and on the last day of the sessions they were brought into the dock guarded by strong reinforcements of police and warders to receive sentences from Mr. Baron Bramwell. Many of them were hardened in crime, and for the more atrocious assaults penal servitude for life was the sentence. Some who were young got off with four years, but that day was a memorable warning for the underworld of London.

29 NOVEMBER.—On the 29th November, 1868, Antoine Berryer of the French Bar, the mirror and model of high advocacy, died at Augerville.

30 NOVEMBER.—By 1785 the public conscience was beginning to awaken to the ferocity of our penal code, for it was recorded that on the 30th November, "nine miserable wretches suffered death, many of them for petty crimes," house-breaking, footpad robbery, horse stealing, stealing two silver spoons in a dwelling-house and so on. "Such are the crimes," said the writer, "for which the unhappy wretches that suffer on the gallows, sessions after sessions, are convicted. And yet the lenity of the English laws is admired because we don't condemn criminals to the torture!"

1 DECEMBER.—On the 1st December, 1924, the Court of Criminal Appeal heard for the first time in its history the voice of a woman advocate. She was appearing on behalf of two men convicted of breaking into a house and stealing jewellery. Attacking the evidence of identification, she got the conviction quashed and earned the praise of the Lord Chief Justice for her force and clearness.

2 DECEMBER.—On the 2nd December, 1789, "was tried at the Admiralty Sessions at the Old Bailey, Captain John Westwich, of the brig 'Pilgrim' from Cork to Bristol for the murder of his carpenter by violently striking him with a pump handle. It was clearly proved that the witnesses in conjunction with an attorney had entered into a conspiracy against the captain who was honourably acquitted." Evidently as a souvenir of the occasion we are told that a copy of the indictment was granted to him.

3 DECEMBER.—"Sunday morning at twenty-three minutes before six Mary was delivered of a fine boy. Thank God for this blessing! May my child grow up to do Him honour and service." Thus on the 3rd December, 1820, a young barrister called John Taylor Coleridge recorded the arrival of his first-born son, who was christened John Duke. On the 3rd December, 1874, that son, then Chief Justice of the Common Pleas, wrote in his own diary: "Ah me! how old we get and here I am at the head of things all but one and to be a Peer. *Eheu fugaces!*" His old father, now in his eighty-fourth year and a retired Justice of the Queen's Bench, could look back with joy at the achievements of two lifetimes.

4 DECEMBER.—On the 4th December, 1871, Sir Robert Collier took his seat for the first time as a member of the Judicial Committee of the Privy Council amidst the rumblings of a storm which rolled for months over the legal and political worlds. No one doubted his fitness and ability, but the manner of his promotion was resented, for by statute the vacancy should have been filled by a judge and he had been Attorney-General, the Government circumventing the requirement by a technical appointment to the Common Pleas which gave him judicial office for a few days on his way to higher things. Lord Chief Justice Cockburn remonstrated with Mr. Gladstone and there were adverse motions in the Lords and Commons.

THE WEEK'S PERSONALITY.

Here and there in legal history a figure stands out in the clear light of a singularly pure nobility of character. Of these one of the greatest is Antoine Berryer, who in the nineteenth century represented to the world the very ideal of disinterested advocacy. Newly called to the French Bar, he first came into prominence when the restored monarchy was seeking victims among the men who had supported Napoleon in the Hundred Days' gamble whereby he had attempted to snatch once more the Imperial Crown. Though an ardent Royalist he flung himself with the most generous ardour into the defence of Ney, of Cambronne and of Debelle. The first he could not save, but he secured the acquittal of Cambronne and the pardon of Debelle. His practice grew prodigiously and he entered politics. When the popular uprising of 1830 had chased Charles X from the throne, he remained in Parliament as the sole champion of the fallen monarchy, at the same time supporting the most liberal measures. When the régime of Louis Philippe gave way to a republic, he boldly declared that republican government was contrary to the interest, manners and traditions of the nation. When Napoleon III seized power in 1851 he openly denounced him as a usurper. Tradition and patriotism meeting in his soul appealed to all the world and the veneration accorded to him in his later years had an almost religious intensity.

THE HOUSE OF CONVERTS.

A recent letter to *The Times*, dealing with mediæval treatment of the Jews, gave an interesting account of their expulsion from England in 1290, when Edward I ordered the officers of the Cinque Ports to secure to those who went within the time fixed with their wives, children, household and goods "a safe and speedy voyage at moderate charges." It seems that a certain captain who turned his passengers out onto a sand bank, telling them to call on Moses to keep the tide back, was convicted of murder and hanged with his accomplices. This exodus was the first chapter of a rather curious piece of legal history, for it began the decline of the great House of Converts, founded and endowed by Henry III in Chancery Lane where Christianised Jews, men and women, could live together in community, working wherever their services were required. Two of them were allowed to enlist among the royal bowmen. In those flourishing days there were about a hundred and fifty inmates, a considerable number considering that the Jews in England amounted to about eleven hundred. In 1280, Edward I had reorganised the establishment, granting it all the proceeds of the chevage or poll-tax levied on Jews.

ENTER THE M.R.

The great expulsion of ten years later brought about an automatic decline in the number of the inhabitants of the House of Converts, and by the fourteenth century there were barely a dozen. At that point, Edward III decided to hand over the property to the Master of the Rolls, at the same time entrusting to him the care of the remnant of the inmates. So for a couple of centuries the hybrid institution continued, the converts still declining in number, till James I finally cut off the revenue which supported them and they vanished altogether. Nevertheless, till the nineteenth century, the Master of the Rolls continued to draw an extra allowance in respect of his position as keeper of the House of Converts and even after that had stopped he remained an *ex officio* trustee for the Society for the Conversion of the Jews, a circumstance which gave rise to a curious situation when that eminent Jew, Sir George Jessel, became Master of the Rolls.

Notes of Cases.

Judicial Committee of the Privy Council.

Burns *v.* Burns.

Lord Atkin, Lord Thankerton, Lord Russell of Killowen, Lord Roche, Sir Lyman Poore Duff (Chief Justice of Canada). 17th October, 1938.

ADMINISTRATION OF ESTATES—HUSBAND AND WIFE—WIFE'S ADULTEROUS ASSOCIATION BEFORE MARRIAGE—HUSBAND AND WIFE SEPARATED—DEATH OF HUSBAND INTESTATE WITHOUT ISSUE—RIGHT OF WIFE TO PARTICIPATE IN HIS ESTATE—BURDEN OF PROOF—ADMINISTRATION ACT, BRITISH COLUMBIA, 1925 (c. 2), s. 127 (1).

Appeal from a judgment of the Court of Appeal for British Columbia dated the 11th January, 1938, affirming a judgment of Robertson, J., dated the 26th May, 1937, which dismissed the appellant's action (as administrator of the estate of Dominic Burns, deceased, and in his own right), against the respondent as administratrix of the estate of James Francis Burns, deceased, and in her own right.

The appellant, by his action, sought revocation of the grant whereby letters of administration of the estate of James Francis Burns issued out of the District Court of the District of Southern Alberta were resealed in the Province of British Columbia in September, 1936, and sought a grant of administration of the estate of James Francis Burns to the appellant, an uncle of the deceased, as his next of kin. Dominic Burns, a brother of the appellant, and an uncle of James Francis Burns, died in June, 1933, intestate and without issue, and domiciled in British Columbia. James Francis Burns then became entitled to a share of the estate as one of the next of kin. The appellant was granted letters of administration of the estate of Dominic Burns in July, 1934. James Francis Burns, being then domiciled in the Province of Alberta, died at Calgary in December, 1935, intestate and without leaving issue. The respondent, as his widow, was appointed administratrix of his estate by letters of administration issued out of the District Court of the District of Southern Alberta in April, 1936, which were resealed in British Columbia in September, 1936. Thereafter the respondent instituted proceedings, as lawful widow and administratrix of her husband's estate, for an account from the appellant of his administration of the estate of Dominic Burns, which was of considerable amount, and these proceedings were held over to enable the appellant to bring the present action. The appellant based his claim for revocation of the resealing of the letters of administration granted to the respondent *inter alia* on the ground that, at the time of the death of James Francis Burns, the respondent had left him and was then living in adultery, and that she was not entitled to take any part of her husband's estate, by reason of s. 19 (1) of the Alberta Intestate Succession Act, 1928, c. 17, which is in identical terms with s. 127 (1) of the Administration Act, British Columbia, 1925, c. 2, and provides "If a wife has left her husband and is living in adultery at the time of his death, she shall take no part of her husband's estate."

LORD THANKERTON, delivering the judgment of the Board, said that the appellant maintained, in the first place, that, if the wife had left the husband, and had lived in adultery prior to the husband's death, the statute would apply, even though she was not living in adultery at the time of his death. Their lordships found it difficult to take that contention seriously, and agreed with the trial judge that the statute meant exactly what it said—a state of affairs existing at the death of the husband. The appellant next maintained that, if it were established that the wife had left the husband and had been living in adultery prior to his death, the burden of proof was shifted and it would be for her to prove that the adulterous life had not existed at the time of the husband's death. That contention was equally untenable. It was for the appellant to prove the facts necessary to establish the statutory forfeiture. There must be evidence from which the court could draw the inference that the wife was living in adultery at the time of her husband's death. If, for instance, association with a man other than the husband was proved to have been adulterous during a period prior to the death, and the mere association were proved to have been still continuing at the time of the husband's death, the court might find itself in a position to infer that the adulterous nature of the association also still continued, but on the facts of the present case the appellant's contention necessarily went far beyond that. The appeal should be dismissed.

COUNSEL: *Cyril Radcliffe*, K.C., and *G. P. Slade*, for the appellant; *W. B. Farris*, K.C., for the respondent.

SOLICITORS: *Blake & Redden; Gard, Lyell & Co.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law].

Court of Appeal.

Welch *v.* Royal Exchange Assurance.

Slesser, MacKinnon and Finlay, L.JJ. 11th November, 1938.

INSURANCE—FIRE INSURANCE—CONDITION IN POLICY—INSURED OBLIGED TO SUPPLY INFORMATION—FAILURE TO SUPPLY—NO JUSTIFICATION IN INFORMATION FOR REPUDIATION OF CLAIM—EFFECT.

Appeal from Branson, J.

In 1929 the claimant insured his stock-in-trade against damage by fire. By Condition IV of the policy the insured was to give the insurers "all such proofs and information with respect to the claim as may reasonably be required together with (if demanded) a statutory declaration of the truth of the claim and of any matters connected therewith. No claim under this policy shall be payable unless the terms of this condition shall have been complied with." By Condition V, if any claim were fraudulent or if any fraudulent devices were used by the insured to obtain benefit under the policy or if damage were occasioned by the wilful act or with the connivance of the insured all benefit should be forfeited. It was also provided that the conditions so far as their nature permitted should be deemed to be conditions precedent to the right of the insured to recover thereunder. The stock-in-trade having been destroyed by fire in 1934, the claimant delivered a claim which was referred to arbitration. The arbitrator directed points of claim and points of defence to be delivered. At the arbitration it appeared that (*a*) on several occasions before the arbitration and before the delivery of the points of defence the insurers had required information as to all bank accounts used or controlled by the claimant for the purposes of his business: (*b*) his mother had a loan account and a current account, both used by him for the purposes of his business, large sums being paid in and drawn out by him; (*c*) he had failed to inform the insurers about these accounts. During the hearing he gave full information and the insurers amended their defence contending that there had been a breach of Condition IV. The arbitrator found that (*a*) the information as to the accounts was reasonably required by the insurers: (*b*) the claimant failed to give the information when required: (*c*) he did not fraudulently conceal the information: (*d*) the accounts when disclosed did not contain any material justifying the insurers in repudiating the claim. The arbitrator held that (*a*) the failure to give the information was a breach of Condition IV: (*b*) there had been, when the arbitration proceedings began, a breach of Condition IV, which barred the claimant's right to recover and which could be relied on by the insurers when they raised the point by amendment of their defence: (*c*) Condition IV was a condition precedent to the insurers' liability and the breach disentitled the claimant to recover though the insurers had the required information when they

amended their defence. Branson, J., upheld the award, holding that the claimant could not recover.

SLESSER, L.J., dismissing the claimant's appeal, said that he could not be heard to say that when the claim was first submitted no reliance was placed on his failure to give information and that as the information was in fact given in the arbitration proceedings before the pleadings were awarded, it was given in time. The arbitrator had found against the claimant on that head, saying that if the information had been given within a reasonable time of its first demand the insurers might have raised an issue under Condition IV from the outset and their failure to do so might well be ascribed to his inaction. Even if the requirement of information under Condition IV were not a condition precedent but merely a condition that the insurers need not pay until the information was provided, the claimant failed because the information was not in fact given before the claim was made. Thus, it was unnecessary to decide whether there had been a failure to satisfy a condition precedent. Had "until" been used instead of "unless" the case would have resembled *Wier* v. *Northern Counties of England Insurance Co.* (1879), 4 Ir. L.R. C.P. 689. It might well be said that here "unless" had no temporal limitation. The claimant through his own act had failed to give the information and was unable to excuse it.

MACKINNON, L.J., agreeing in dismissing the appeal, said that the stipulation was of a nature which permitted it to be a condition precedent.

FINLAY, L.J., agreed with MACKINNON, L.J.

COUNSEL: *Birkett*, K.C., and *Borneman*; *Vos*, K.C., and *Arthur Wilson*.

SOLICITORS: *Philip Conway, Thomas & Co.*; *W. C. Crocker*.

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

British Industrial Plastics Ltd. *v.* Ferguson and Others.

Slesser, MacKinnon and Finlay, L.J.J. 24th November, 1938.

PATENTS AND DESIGNS—SECRET PROCESS—OWNED BY COMPANY—DISCLOSED BY FORMER SERVANT—ACTION FOR PROCURING DISCLOSURE BY HIM.

Appeal from Porter, J.

The plaintiffs claimed damages for alleged conspiracy between J.F., J.F. Ltd. and S.D. to make use of a secret process of the plaintiffs for making certain powders. In 1932, after many years' service, S.D. had left the employment of the plaintiffs. He had then entered into a leaving agreement providing that he should be paid £500 a year for two years on condition that he should not interest himself in the manufacture of certain products. It was alleged that he had been induced by the other defendants to break an agreement that he would not divulge any secret or other manufacturing process then or thereafter to be used in the plaintiffs' business, or any information concerning their commercial or manufacturing operations or business, without their consent, nor use the same for his personal benefit otherwise than as their servant. Alternatively, it was alleged that it was an implied term of their employment of him that he should not during his employment or afterwards disclose or use without their consent any secret process or information relating to any methods of manufacturing their products developed and made known to him while in their employment. Porter, J., held that the plaintiffs had not proved (1) conspiracy, or (2) that J.F. and J.F. Ltd. had induced S.D. to break his contract, but awarded damages against S.D., holding that the leaving agreement did not absolve him from his ordinary duty to keep secret the private process of his employers. The plaintiffs appealed against the finding as regarded J.F. and J.F. Ltd.

SLESSER, L.J., dismissing the appeal, said that to establish their cause of action the plaintiffs must show that the violation of legal right in procuring a breach of contract was done wilfully and knowingly. The judge had found that these defendants suspected that S.D.'s knowledge of the process was derived in the main from experience with the plaintiffs, and that his process might be the plaintiffs' and secret. His lordship accepted the judge's view that before these defendants received the information they referred S.D. to their patent agents for advice whether or not it was secret. The method was inadequate, but if it were *bonâ fide* they could not be said to have acted wilfully and knowingly, either with actual knowledge that S.D. would break a contract or by refusing the means of knowledge. It had been argued that these defendants procured S.D. to destroy the secrecy of the process by telling him to publish it to their patent agents, and so illegally induced a breach of contract. That was a wrong construction to put on their acts. It had been held that S.D. had broken his contract by disclosing the process, and, it followed, he first did so when he took it to the patent agents. But though he went there on the suggestion of these defendants with a contingent promise of employment, that was far from saying that when they sent him they knowingly, intentionally or wilfully induced him to break his contract. An actionable procurement could only be assumed by holding direct knowledge or knowledge imputed to the procuring party. Direct knowledge could not be found on the evidence. Imputed knowledge to be derived from wilful or fraudulent ignoring of the facts had been negatived by the judge. These defendants thought that if the patent agents certified that S.D. had a patentable method they could safely use it and employ him. They were without a fraudulent mind. In those circumstances, even if the publication to the patent agents was procured by them, they had a lawful excuse for asking S.D. to take steps which, if proper, would have protected the plaintiffs and themselves from any risk of misuse by themselves or S.D. The plaintiffs failed.

MACKINNON and FINLAY, L.J.J., agreed.

COUNSEL: *Shelley*, K.C., and *Aldous*; *Sir Patrick Hastings*, K.C., and *James Mould*.

SOLICITORS: *Crane & Hawkins*; *C. G. Bradshaw & Waterson*.

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

Appeals from County Courts.

In re a Debtor (No. 38 of 1938).

Farwell and Morton, JJ. 14th November, 1938.

BANKRUPTCY—PURCHASE OF GOODS—ORAL ORDER BY BUYER'S AGENT—DELIVERY TO BUYER'S EMPLOYER—WHETHER ENFORCEABLE CONTRACT—SALE OF GOODS ACT, 1893 (56 & 57 VICT., C. 71), SS. 4, 35.

Appeal from Croydon County Court.

On the 3rd March, 1938, the authorised agent of the debtor ordered certain kitchen fitments to be made and delivered to the debtor at a place where building operations were being carried on. The vendors orally accepted the order, and the debtor soon afterwards entered it and the price, £65 4s. 2d., in his purchases day book and bought ledger. On the 18th March the goods were delivered at his premises. There was no evidence that he was present, but his foreman referred the man in charge of the goods to one of his employees who received them and deposited them on his premises. On the 29th March the debtor executed a deed of arrangement for the benefit of his creditors. The goods were not in terms excluded from the property assigned. They were still on his premises on the 12th April when the vendors presented a petition on which a receiving order was made by the registrar, who held that there was an enforceable contract.

FARWELL, J., dismissing the debtor's appeal, said that he had contended that, having regard to the Sale of Goods Act, 1893, s. 4, there had not been an enforceable contract. But

once there was an acceptance within the definition of s. 35, the requirements of s. 4 had been complied with, and s. 4 (3) need not be considered. The object of s. 4 (3) was to provide that a contract might be enforceable if its requirements were complied with, even though there might have been no acceptance within s. 35. There was no justification for reading the word "only" into s. 4 (3) before the words "when the buyer." There was no contradiction between s. 35 and s. 4 (3). If there was acceptance within s. 35 the requirements of s. 4 had been complied with, but if there were no acceptance within s. 35 there might yet be acts amounting to acceptance within s. 4 (3) which would render a verbal contract enforceable.

COUNSEL: *H. Burt; Sacks*, K.C., and *G. Kingham*.

SOLICITORS: *Yarde & Loader; Hyde, Mahon & Pascall*.

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

High Court—Chancery Division.

Attorney-General *v.* Rochdale Canal Co.

Bennett, J. 24th November, 1938.

WATER AND WATERWAYS—CANAL COMPANY—POWER TO SUPPLY WATER FOR "CONDENSING OR RAISING STEAM TO MILLS OR WORKS"—SUPPLY TO RAILWAY FOR ENGINES—WHETHER AUTHORISED—ROCHDALE CANAL ACT, 1899 (62 & 63 Vict., c. cclvii), s. 37.

By the Rochdale Canal Act, 1899, s. 37, the company was authorised to supply water for certain purposes, but not "to supply water (other than water for condensing or raising steam to mills or works within one hundred yards of the canal) within the statutory limits of supply of any corporation, or public body for the time being, owning or controlling a water undertaking . . ." Near the towpath a railway passing within a hundred yards of the canal had a 70,000-gallon tank into which water from the canal was pumped. This water was passed out into a "pick-up" trough between the metals. Water was also supplied to two water column tanks from which engines drew water. The Rochdale Corporation sought a declaration that the supply was *ultra vires*.

BENNETT, J., said that the railway's collection of lines, troughs, pipes and towers within a hundred yards of the canal were not "works" within the meaning of the section. The supply was not authorised.

COUNSEL: *Radcliffe*, K.C., and *Fitzgerald*, K.C.; *Eversheds*, K.C., and *Roger Turnbull*.

SOLICITORS: *Sharpe, Pritchard & Co.*, for *Harry Bann*, Town Clerk, Rochdale; *Winter & Co.*, for *H. A. Kilner*, of Rochdale.

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

High Court—King's Bench Division.

R. *v.* West Derby Assessment Committee; *Ex parte* Mersey Docks and Harbour Board and Liverpool Rating Authority.

Lord Hewart, C.J., Charles and Macnaghten, JJ. 29th October, 1938.

RATING AND VALUATION—LARGE HEREDITAMENT COMPRISING PREMISES LET OUT TO VARIOUS PERSONS—PROPOSAL TO AMEND VALUATION LIST BY RATING INDIVIDUAL PREMISES SEPARATELY—NOTICE OF PROPOSAL TO OCCUPIERS—WHETHER OWNER OF WHOLE HEREDITAMENT ENTITLED TO NOTICE—RATING AND VALUATION ACT, 1925 (15 & 16 Geo. V, c. 90), s. 37 (3).

Rule *nisi* for prohibition.

The rule was for a writ of prohibition to be directed to the West Derby Assessment Committee prohibiting them and the rating authority for the County Borough of Bootle from proceeding with proposals to amend the current valuation list for the Bootle rating area in respect of certain shipping berths, sheds, and appendages, on the ground that the committee had no jurisdiction to hear or determine the proposals. A series of proposals was contemplated for the purpose of affecting the assessment of a series of notional hereditaments which were part of a much larger hereditament, no regard being had to the interest of the Mersey Docks and Harbour Board in the whole and undivided hereditament. The grounds suggested for the proposed amendment in the current valuation list were that, in the opinion of the rating authority, the property should be separately assessed, that the property was let out, and that the assessment of it should not be included in the *cumulo* assessment of the Board's estate.

LORD HEWART, C.J., said that the question raised clearly affected vitally the position of the Harbour Board. Having referred in detail to s. 37 of the Rating and Valuation Act, 1925, he said that s. 37 (3) plainly provided that the rating authority must within the specified period transmit a copy of the proposal to the occupier "in the case of a proposal made otherwise than by the occupier of the hereditament to which it relates . . ." The question was who, in the circumstances, was properly to be called the occupier. The argument for the assessment committee and the rating authority proceeded on the assumption that the only occupier referred to—and therefore the only occupier to whom the notice in question need be given—was an occupier of the notional or potential hereditament which it was proposed to carve out of the undivided whole. The Board replied that that was a quite fictitious way of regarding the facts of the case. The proposals related not less to the undivided whole than to the notional part. The Board complained that questions affecting, perhaps vitally, their enormous hereditament were to be dealt with behind their backs, and that what was now an undivided whole was to be parcelled out and treated *seriatim* as a string of unrelated parts. It was contended, in other words, that it was in the circumstances inaccurate to speak of one occupier only. There might be two. He (his lordship) could not think that the hereditament to which the proposal related could truly be regarded as a merely notional hereditament which it was intended on the happening of a certain event to bring into being, to the neglect of the whole hereditament of which the notional hereditament at present formed part. The rating authority contemplated dealing with a long series of cases affecting the value of the Board's property. If the assessment committee's scheme were persisted in, there would, or might, be decisions behind the Board's backs which would vitally affect their rights and their property. A course had been contemplated which might well be prevented by the prerogative writ of prohibition, and the Board were well justified in taking steps before it was too late to prevent a very grave interference with their rights. The rule should be made absolute.

CHARLES and MACNAGHTEN, JJ., agreed.

COUNSEL: *Comyns Carr*, K.C., and *Hartley Shawcross*, for the rating authority, showing cause against the rule; *Hartley Shawcross*, for the assessment committee, showing cause; *G. J. Lynskey*, K.C., and *H. I. Nelson*, for the Board, in support; *Michael Rowe*, for various shipping companies, in support.

SOLICITORS: *Sharpe, Pritchard & Co.*, for *Harold Partington*, Town Clerk, Bootle; *T. J. Smith & Son; Gregory, Rowcliffe & Co.*, for *E. A. Moorhouse* (Solicitor to the Board); *Hill, Dickinson & Co.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

The executive committee of the Institute of Journalists, at a meeting in London recently, resolved in the name of the council to support Mr. A. P. Herbert's Law of Libel (Amendment) Bill, which is being sponsored by the Empire Press Union.

B. G. Utting & Co. Ltd. *v.* **Hughes (Inspector of Taxes).**

Macnaghten, J. 8th November, 1938.

Revenue—Income Tax—Building Company—Erection of Houses—Houses Leased for Premium and Ground Rents—Whether Assessable under Sched. A or Sched D—Income Tax Act, 1918 (8 & 9 Geo. 5, c. 40).

Appeal by case stated from a decision of the Special Commissioners of Tax.

At a meeting of the Special Commissioners, B. G. Utting and Co., Ltd., appealed against assessments to income tax for the years ending 5th April, 1936 and 1937, made under Case I of Sched. D to the Income Tax Act, 1918. The company carried on the business of builders, contractors and developers of building estates. They owned two estates. In the course of their trade the company had developed those estates by making roads and laying down sewers and drains, and had erected houses on the land. In a number of cases the company sold land with the houses thereon freehold for cash, and in those cases the purchase price received by the company was brought into the company's accounts as a trading receipt, while the cost of the land and buildings was set against it as a trading expense. In other cases the company disposed of houses by way of ninety-nine year leases in consideration of a cash payment and subject to a yearly ground rent of either £9 15s. or £10 10s. In those cases the cash payment was brought into the company's accounts as a trading receipt and the ground rent was brought into those accounts at a figure assumed to represent the cost thereof, and the cost of the land and buildings was debited as a trading expense. During the period from the 1st July, 1935, to the 31st December, 1936, the company granted leases for ninety-nine years, subject to ground rents, in respect of nine houses. The company had not since its formation sold any ground rents, but had always retained its reversionary estate in those houses in respect of which the ground rents were payable. It was contended on behalf of the company, *inter alia*, that both the premiums received on the granting of the leases and the ground rents reserved were profits arising to the company from the ownership of land in respect of which the company was taxable only under Sched. A. In support of that contention *Salisbury House Estate, Ltd.* v. *Fry* [1930] A.C. 432, and *Birch* v. *Delaney* (1936), I.R. 517, were relied on; alternatively, that if the value of the reversionary estate retained by the company or of the right to receive the ground rents fell to be included in the computation of the profits of the company's trade for the purpose of Sched. D no profit arose to the company in respect of the value of such reversion or ground rents until the sale thereof, and that until the reversion was realized such value fell to be brought into account only at cost or at market value if that were less than cost. It was contended on behalf of the Crown, *inter alia*, that (*a*) the company in the course of its trading had sold houses and land on ninety-nine year leases in each case for a cash payment and money's worth, that was, the right to receive a ground rent: (*b*) the cash payments were trading receipts of the company and as such fell to be included in the computation of the company's profits for the purposes of assessment under Case I of Sched. D: (*c*) the right to receive ground rents was a part of the consideration for which the company had disposed of land and houses, and was a right which could readily be turned into money, and was a trading receipt equally with the cash payments. The Commissioners decided in favour of the Crown, and the company now appealed against that decision.

Macnaghten, J., said that while the acquisition of a freehold reversion might well be part of the business of an investment company, it did not seem to be part of the business of a speculative builder. If that view were correct, the argument that the value of the reversion could appear as a receipt in the builder's accounts at cost fell to the ground. Further, where stock in trade was taken at cost, the cost could be ascertained by investigating the accounts of the owner of the stock. In the present case the appellant company never bought any freehold reversion: there was nothing in the books which would enable anyone to ascertain the cost of the reversion. All that could be done was to ascertain the cost of a particular house. In any event the case was concluded by *Commissioners of Inland Revenue* v. *Emery (John) and Sons*, in the House of Lords: [1936] S.C. (H.L.) 36, where it was held that a firm had realized a profit from the creation of rent-charges, even though that profit had not been received by them in the form of cash, and, accordingly, that the realizable value of the rent-charges fell to be taken into account in computing the firm's profits. True that there the builders had parted with all their interest in the land except the charge to secure the ground annuals, whereas here the builders had only parted with a right to possession for ninety-nine years. That distinction, however, did not affect the matter. The ground on which the House of Lords proceeded was that the rent-charges were readily saleable. In the present case the ground rents, or the reversion, were readily saleable, and their realizable value could easily be ascertained.

The appeal must be dismissed.

Counsel: *A. M. Latter*, K.C., and *J. S. Scrimgeour*, for the appellant company: *The Attorney-General* (Sir Donald Somervell, K.C.) and *R. P. Hills*, for the Crown.

Solicitors: *Royds, Rawstorne & Co.*: *The Solicitor of Inland Revenue.*

[Reported by R. C. Calburn, Esq., Barrister-at-Law.]

Dalton *v.* **Adelphi Club Limited.**

Lord Hewart, C.J., Charles and Macnaghten, JJ.
29th November, 1938.

Gaming—Stud Poker—Whether an Unlawful Game—Gaming Houses Act, 1854 (17 & 18 Vict., c. 38), s. 4.

Appeal by case stated from a decision of the Metropolitan magistrate, sitting at Clerkenwell Police Court.

An information was preferred by one, Dalton, on behalf of the Metropolitan police, against Adelphi Club Ltd., the proprietors of the Adelphi Club, alleging that they had used their premises for the purpose of unlawful gaming contrary to s. 4 of the Gaming Houses Act, 1854. Two further informations charged six persons with assisting in conducting the premises of the club while they were being used for unlawful gaming. The stud poker played at the club was as follows: The dealer dealt a card face down to each player, that card being looked at only by the player to whom it was dealt. A second card was then dealt to each player face upwards so that all the players could see it. The player to whom the highest card was so dealt "called," i.e., paid in a stake to the pool. Each player then called in turn. A player could either drop out, pay in the same amount as called, or increase the stake put up by the caller. When the stakes were so increased, each player had to pay in the increased stake or drop out. Another round of cards was then dealt to the players, again face upwards, and the same process took place, five cards being dealt in all. The winner was the player left in the game with the highest hand. Different values were allotted for various combinations of cards, for example, pairs, threes, or sequences. Evidence was given that the game was one of skill, and that skill predominated in it to a greater degree than in whist or bridge. The magistrate stated that there was no evidence before him that chance predominated or that the chances were not alike favourable to all players. It was contended for the police that stud poker played for money was an unlawful game within the meaning of s. 4 of the Gaming Houses Act, 1854, in that it was a game of cards which was not a game of mere skill. It was contended for the respondents that stud poker was a game of cards in which

skill predominated and that it was therefore not an unlawful game. The magistrate held that stud poker was a game of skill and dismissed the informations. *Cur. adv. vult.*

LORD HEWART, C.J., giving the judgment of the court, said that the magistrate had not been asked to find that the game was one of mere skill: and any such finding would have been absurd. *Jenks* v. *Turpin* (1884), 13 Q.B.D. 505, was the leading authority on the meaning and effect of s. 4 of the Act of 1854, and the judgments of Hawkins and A. L. Smith, JJ., contained a full and authoritative exposition of that section. It was a case often cited and as often approved and followed, as, for example, in *R.* v. *The O.K. Social and Whist Club, Ltd.* (1929), 21 Cr. App. R. 119, and *R.* v. *Hendrick* (1923), 15 Cr. App. R., 149. In *Jenks* v. *Turpin*, *supra*, the game in question was baccarat. Hawkins, J., said at p. 524: "The unlawful games . . . are . . . every game of cards which is not a game of mere skill; and, I incline to add, any other game of mere chance . . . baccarat . . . is a game of cards. It is a game of chance; and though . . . experience may make one player . . . more successful than another, it would be a perversion of words to say it was in any sense a game of mere skill. It is therefore, in my opinion, an unlawful game within the meaning of the statute." Whatever might be the degree of skill an experienced player at stud poker might acquire, that game as described in the evidence must always remain a game of chance. The appeal must be allowed.

COUNSEL: *G. B. McClure* and *Maxwell Turner*, for the appellant; *R. N. Bibby-Trevor* (*P. H. M. Oppenheimer* with him), for the respondents.

SOLICITORS: *The Solicitor for the Metropolitan Police; Bernard Linder & Co.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Parliamentary News.

Progress of Bills.

House of Lords.

Crops (Prevention of Damage) Bill.
Read First Time. [24th November.

Expiring Laws Continuance Bill.
Read First Time. [29th November.

Limitation Bill.
In Committee. [29th November.

Marriage (Scotland) Bill.
Read Second Time. [24th November.

Solicitors Amendment (Scotland) Bill.
Read Second Time. [29th November.

Wild Birds (Duck and Geese) Protection Bill.
Read Second Time. [29th November.

House of Commons.

Cancer Bill.
Read First Time. [30th November.

Expiring Law Continuance Bill.
Read Third Time. [28th November.

Glasgow Corporation Order Confirmation Bill.
Read First Time. [30th November.

Hall-marking of Foreign Plate Bill.
Read First Time. [30th November.

Mining Industry (Welfare Fund) Bill.
Read First Time. [24th November.

Paisley Corporation (Cart Navigation) Order Confirmation Bill.
Read First Time. [30th November.

Public Health (Coal Mine Refuse) Bill.
Read Second Time. [25th November.

Public Works Loans Bill.
Read First Time. [24th November.

Questions to Ministers.

LEGAL AID FOR POOR PERSONS.

Mr. RHYS DAVIES asked the Financial Secretary to the Treasury whether as the belief expressed in the Majority Report of the 1928 Commission on Legal Aid in Civil Cases that the number of centres with a poor man's lawyer would be rapidly enlarged has not been realised, he will consider setting up an inquiry into the facilities at present available to provide legal aid for poor persons in civil and criminal matters, and the extension of such facilities to cover applicants whose total income from all sources does not exceed £3 per week, and or whose goods do not exceed £100 in value and to cover county courts and inferior courts?

THE ATTORNEY-GENERAL: I have been asked to reply. My Noble and learned Friend the Lord Chancellor is considering the appointment of a committee to inquire into the giving of legal advice to poor persons. With regard to the latter part of the question, the hon. Member will probably bear in mind that there was an inquiry by the very competent Committee to which he refers and that the circumstances in relation to that part of the question have not substantially altered since that date. The possibility of rendering assistance to poor persons in relation to certain special matters is being carefully considered at the present time. In these circumstances my Noble Friend does not think that an inquiry by a Committee would be of assistance to him in his consideration of the difficult and important questions raised by the latter part of the question. [28th November.

KING'S BENCH DIVISION.

Mr. LIDDALL asked the Attorney-General whether he is aware of the continued delay in trying cases in the King's Bench Division owing to the inability of the existing official organisation at the Law Courts to remedy the present confusion; and will he appoint a manager of the lists, as recommended two years ago by paras. 149 to 167 of the Report of the Peel Commission?

THE SOLICITOR-GENERAL: My Noble and learned Friend the Lord Chancellor is aware that there is a considerable number of cases awaiting trial in the King's Bench Division. With a hope of improving the position, three Lords Justices have been appointed under the terms of the Supreme Court of Judicature (Amendment) Act, 1938, and my hon. Friend will observe that two such Lords Justices have been till recently sitting as additional judges of the King's Bench Division and thereby rendering considerable assistance in relation to arrears. It is hoped that further measures may be taken at an early date to enable the work of the King's Bench Division to be dealt with more expeditiously. The Lord Chancellor does not think that the non-appointment of a manager of the lists is responsible for the present arrears. He hopes, as I have stated, to remedy the present position, which is constantly in his mind, and he intends to discuss it again at an early date with the proper authorities.
[29th November.

Societies.

Incorporated Law Society of Liverpool.

ANNUAL GENERAL MEETING.

The One hundred and eleventh Annual General Meeting of the Incorporated Law Society of Liverpool was held at the Law Library on Friday, the 25th November. The President (Mr. G. E. Castle) presided, and amongst those present were Messrs. J. W. Cocks, A. E. Frankland, W. Glasgow, F. C. Gregory, L. S. Holmes, J. G. Kenion, G. A. Solly, P. N. Stone, F. Weld, Vivian D. Heyne (Vice-President), S. R. Dodds (Hon. Treasurer) and R. Marshall (Hon. Secretary).

The notice convening the meeting, together with the report and accounts, having been taken as read, the President delivered his address.

A year ago, he said, his predecessor, Mr. Frankland, in referring to the work of the Poor Persons Procedure, had forecast that: "It was bound to increase in the near future with the extension of the grounds for divorce and he urged all those who had not seen their way to assist to reconsider the matter and allow their names to be added to the rota of those willing to undertake a share of this work." In this forecast Mr. Frankland had been proved to be correct. The number of rota committees, which prior to this year had averaged ten per annum, in 1938 reached a total of twenty.

The rota committees considered applications and granted certificates to sue or defend as a poor person, provided they were satisfied that the applicant was a poor person and that, on the evidence before them, there was a *primâ facie* case.

The number of interviews which the Secretary and his staff had had with applicants during the past year had more than doubled. There had been over 500 applications since January—about one-third of which were still pending because

every conducting solicitor already had one or more cases in hand.

In the Spring of this year a Welsh Law Society had decided that the Poor Persons Procedure could no longer be worked in their district under existing conditions, and that the procedure was an unjustifiable burden such as no other profession had been asked to bear. A deputation from that Society had already seen the Council of The Law Society, who were unsympathetic towards a modification of the basis of the present procedure on the grounds that the work, if not undertaken by the profession, would be dealt with by a Government Department, the sphere of whose influence might expand to other matters.

The President said that, while agreeing with the Welsh Law Society's contention that jurisdiction in paid divorce cases should be extended to District Registries and Assizes, he also appreciated the danger of the Poor Persons Procedure becoming another State bureaucracy possibly to their detriment.

He could well understand that some of the smaller societies might find the present procedure more than they could be expected to bear, but the machinery of their Society ran so smoothly that the burden on conducting solicitors was not unduly onerous.

Many a young solicitor applied early in his career to join *the rota of the Poor Man's Lawyer Department for which in* many cases he received something, even if only a nominal advocacy fee. He suggested that he should at the same time also place his name on the rota of conducting solicitors for the Poor Persons Procedure.

The influx of work owing to the new Divorce Act was such that in July last he had sent out seventy-four letters inviting assistance as conducting solicitors—the result was: Nine agreed to come on the permanent rota; seventeen agreed to take one or two cases in the year; eight refused; and thirty did not reply.

If what he had said induced some members of their Society who had not already done so to put their names on the rota of conducting solicitors for the Poor Persons Procedure, he would feel that in one small respect his year as President had not been wasted.

The membership of the Society continued to increase and the present total of 459 had never been exceeded; with very few exceptions the Society now comprised all the practising solicitors in the City of Liverpool, but there were still a certain number of non-members appearing in the Law List, most of whom were managing clerks, who were eligible to become members of their Society at a specially reduced rate of subscription and who would most assuredly be welcomed.

He hoped and believed that the time would come when everyone on being admitted a solicitor would automatically, of his own free will, become a member of his local Law Society.

During the past year the very important subject of defalcations by solicitors had again received the careful consideration of The Law Society and the Provincial Law Societies consequent upon a report of a special sub-committee set up by The Law Society.

The proposals in the report had been duly circulated and he did not propose to deal with them in detail except to say that certain of them had already been put into operation, whilst others required legislation.

One of the proposals now in force was that the Council should provide the Provincial Law Societies with a list of all persons applying for leave to enter into articles of clerkship to enable the Provincial Societies to supply any information they might have or obtain with regard to such applicants.

Another proposal of paramount importance was: "That the Council to The Law Society should be empowered to prohibit a solicitor from employing as a clerk without their permission an unqualified person who may have been found by the Disciplinary Committee to have been party to the misconduct of a solicitor whose name has been struck off the roll or who has been suspended from practising, fined or censured by the Disciplinary Committee."

Representations had been made to the Lord Chancellor urging that more time should be allowed for assize sittings at Liverpool having regard to the continued growth in the number of cases for trial. The autumn assize had just concluded, and, despite the efforts of the judges to cope with the list by long sittings of the court, no less than fifteen cases were not reached and would presumably be assigned to the next Liverpool assize as it had been found impossible to add to the already overburdened lists at the present Manchester assizes.

He had no doubt their committee would notify the Lord Chancellor of these facts which he felt must strengthen their case for the extension of the time allowed for assize sittings.

He had, he said, been very fortunate in having been President of the Society during a year when the office of Lord Mayor was held by a member of their own committee.

Mr. Cory Dixon was eminently successful during his year of office as Lord Mayor and they had been proud of him: he had been exceptionally friendly and hospitable not only to him as President, but to all members of their Society. He had continued the custom initiated by his predecessors of formally, but privately, welcoming His Majesty's judges at the opening of each assize, and on every occasion the President had been invited to attend in company with the Recorder and the Town Clerk.

In June, he received what struck him as a charmingly worded note from Sir Lionel Warner of the Mersey Docks and Harbour Board to the effect that: "His Majesty's Judges of Assize had intimated that they would be pleased to cruise on s.s. 'Galatea'" and invited him to accompany the party, which resulted in a very delightful dinner and evening's cruise.

Referring to the Provincial Meeting of The Law Society held at Manchester in their centenary year, he said that it was unfortunate that the meeting took place in that ghastly week of national crisis which none of them were likely to forget, but in spite of the distraction thus caused, the meeting was well attended and was in every way successful; the papers read were of high standard and led to really interesting discussions.

It seemed to those who attended as delegates from Liverpool, *that the Manchester Law Society, as hosts, went out of their* way to treat them as their most honoured guests, and oldest friends; *apropos* of this, he was convinced that the exceptionally friendly relations which existed between their Society and the Manchester Law Society were of the highest importance.

The President then referred to the problem of the "value of life" which had arisen since the abolition in 1934 of the rule *actio personalis moritur cum persona*.

The two leading cases (both concerning motor car accidents) *Flint* v. *Lovell* (Court of Appeal, 1934) and *Rose* v. *Ford* (House of Lords, 1937) had resulted in permitting the inclusion among general damages recoverable, of a claim by personal representatives for "loss of expectation of life" in cases where the injured person had, in fact, died before the action was commenced. The principle laid down might be clear enough, but to those who read the law reports, the perplexity of judges and juries was only too obvious and their problem seemed almost incapable of solution.

"What is the value in money of life which has been unexpectedly shortened?" asked the President. "You can offer a house for sale by auction in order to test its market value but not so with human life. Can anyone say that the value of life depends on the amount of worldly goods possessed by the deceased? Is the expectation of the life of a sickly child worth more in money than the remaining years of a healthy septuagenarian? If a motor car accident results in the death of two persons of the same age, one a happy and healthy but penniless tramp, the other a miserable millionaire who is an invalid—how are you to say what were in £ s. d., the values of their respective expectations of life?"

It was difficult enough to assess damages for shortened expectation of life, but the position was further complicated by the fact that damages for pain and suffering were also recoverable as well as compensation to dependents under Lord Campbell's Act.

A recent press report stated that a Lord Justice of Appeal in awarding £1,023 damages with costs to the father of a child aged eight, killed by a London bus, said: "The task set the courts in cases such as this is difficult and I think may be said to be impossible—I am here to-day fulfilling the functions of a jury and I shall not give any more reasons than a jury would give in reaching their decision."

The answer to the problem of what was the value of "expectation of life" was, it seemed, entirely arbitrary and damages awarded might even be liable to variation with the moods of a judge or jury.

If Parliament did not intervene it seemed that a recognised tariff of sorts might become established—as a result of an accumulation of isolated and entirely different instances.

Possibly the solution of the conundrum was to follow the course taken by the General Assembly of New Zealand. That country, in 1936, passed an Act on exactly the same lines as the English Act of 1934.

Subsequently, difficulties (as mentioned above) having been realised, an amendment was passed last year to the effect that damages recoverable for the benefit of the estate of a deceased person "shall not include any damages for his pain or suffering, or for any bodily or mental harm suffered by him, or for the curtailment of his expectation of life."

It seemed to be one of the advantages of procedure in the dominions that amendments of legislation could be made more readily than at Westminster.

Could a judge or jury or anyone else put a price on the priceless?

The President concluded his address by thanking the officers of the Society for the assistance they had given him during his year of office.

It was moved by the President, seconded by the Vice-President and resolved :—

"That the report of the Committee, subject to any alterations or modifications which the officers may find necessary together with the statement of accounts be approved and adopted."

It was moved by Mr. Park N. Stone, seconded by Mr. F. Weld and resolved :—

"That the thanks of the meeting be given to the President for his address and that the same be printed and circulated as part of the report."

It was moved by Mr. W. J. Shield, seconded by Mr. G. R. Cook and resolved :—

"That the thanks of the Society be given to the officers and members of the Committee for their services during the past year."

There being only nine nominations for the nine vacancies on the Committee, the following gentlemen were elected for the ensuing term of three years : Messrs. B. Arkle, D. H. Brabner, G. E. Castle, M. Cory Dixon, A. E. Frankland, J. W. T. Holland, D. H. Mace, J. B. McKaig and L. E. Rutherford.

The Union Society of London.

A meeting of the Society was held at the Middle Temple Common Room, on Wednesday, the 30th November, the President (Mr. Hubert Moses) being in the chair. Mr. S. R. Lewis proposed the motion : "That we have no right to establish a National Home for the Jews in Palestine." Mr. W. G. Wingate opposed and Messrs. J. P. Oakes, D. F. Brundrit, A. D. Russell-Clarke, O. L. S. Philpot, Melville Buckland, S. Arthur and Major G. M. J. Buller also spoke. Mr. Lewis replied. Upon division the motion was lost by four votes.

Chartered Institute of Secretaries.

ANNUAL DINNER.

The forty-seventh annual dinner of the Chartered Institute of Secretaries was held at Guildhall, London, on Thursday, 24th November. The President, Mr. W. J. Irving Scott, was in the chair, and there were nearly 600 guests and members of the Institute present.

After the loyal toasts had been honoured Major RICHARD RIGG, O.B.E., T.D., J.P., Vice-President, proposed the toast of "The Corporation of London," saying how much they welcomed the opportunity of foregathering in that historic hall.

The Lord Mayor, Sir FRANK BOWATER, in his reply said that secretaries had come from all parts of the country to be present that evening. The Institute was proud of its association with the City, where it had been domiciled for the past forty-seven years, and it was especially proud in the possession of its freehold hall in London Wall. He expressed his pleasure on hearing that Sir George Broadbridge, an Alderman of the City, was to be their President during the forthcoming year.

The toast of "The Chartered Institute of Secretaries," was proposed by the Master of the Rolls, Sir WILFRID GREENE. The Institute, he said, maintained a high standard, and in its recent examinations only 2,500 had passed out of a total of 7,000 candidates. When at the Bar he had realised the competency of the secretaries' work and the excellence of everything they did, which was testimony of their characters and of the Institute to which they belonged.

THE PRESIDENT, replying, said that the Master of the Rolls before ascending the Bench acquired an extensive knowledge of companies and company secretaries, and this enabled him to speak with particular knowledge of the work of chartered companies. The Institute now had 12,000 members in this country and overseas, and in addition there were 13,000 students. Since the time when he had joined its membership had increased fourfold. The President concluded his speech by paying a tribute to the services rendered to the Institute by its secretary, Mr. Isdell-Carpenter.

The toast of "the Guests" was proposed by Sir GEORGE BROADBRIDGE, Bt., K.C.V.O., M.P., Vice-President, and LORD THANKERTON, P.C., K.C. responded.

Among others present were : Lord Plender, Lord Walsingham, Sir Herbert Creedy, Sir Alexander Gibb, Sir Louis Greig, Sir Harry Lindsay, Sir Ian MacAlister, Sir Cyril Norwood, Sir Allan Powell, Sir Malcolm Robertson, Sir Robert Webber, Judge T. E. Haydon, K.C., Mr. L. Cohen, K.C., The Hon. A. E. A. Napier, Messrs. R. W. Bankes, E. G. Culpin, D. W. Douthwaite, E. J. Heckscher, C. H. Isdell-Carpenter, N. R. Jauralde, E. H. S. Marker, P. Martin, R. H. Monier-Williams, A. A. Pitcairn, Sheriff F. Rowland, C. Smith, H. S. E. Vanderpant, Alderman and Sheriff G. G. Warr, R. A. Wilson and Major R. M. Woolley.

University of London Law Society.

A meeting was held on Tuesday, 29th November, at Gower Street, London University, the President, Mr. Charles Levy, LL.B., barrister-at-law, being in the chair. The business of the evening consisted of members' papers. Mr. Neville Gill read a paper on "Crime in 1834," based on reports from the columns of *The Times* for that year. Mr. David Sacker read a paper on "Lord Chancellor Halsbury." In the subsequent discussion the President, Mr. Giffen, Mr. Knarpul and Mr. Reginald Gill took part.

United Law Society.

A meeting of the Society was held in the Middle Temple Common Room on Monday, 28th November, Mr. J. H. Vine Hall in the chair. Mr. A. E. Hunter proposed : "That this House would welcome the adoption of Compulsory National Service in Peace Time." Mr. W. M. Permewan opposed. There also spoke Messrs. R. E. Ball, O. T. Hill, J. A. Davies, A. E. Rimmer, G. C. Raffety, H. M. Sharp, E. D. Smith, C. H. Pritchard, R. H. Blake (visitor), F. R. McQuown, and C. L. Phillips (visitor). Mr. Hunter replied, and on a division, the motion was lost by two votes. Attendance nineteen (including two visitors).

The Hardwicke Society.

A meeting of the Society was held on Friday, 25th November, in the Middle Temple Common Room, the President, Mr. Lewis Sturge, in the chair. Mr. G. Krikorian moved : "That the Jewish claims in Palestine are unreasonable." Mr. L. S. Weinstock opposed. There also spoke Mr. Lawrence Travers, Mr. S. Nissim, Mr. G. E. Crawford (Ex-President), Major R. N. Hales, Mr. J. E. Harper, Mr. Buller, Miss Morgan Gibbon, Mr. Campbell Prosser, Mr. W. J. Chalmers, and Mr. A. Gordon. The Hon. Mover having replied, the house divided, and the motion was carried by four votes.

Legal Notes and News.

Honours and Appointments.

The India Office announces that the King has been graciously pleased to approve the appointment of Mr. Justice MOHOMEDBHOY ALLADINBHOY SOMJEE, Barrister-at-Law, to be a puisne Judge of the High Court of Judicature at Bombay on the retirement on 20th December of Mr. Justice Rangnekar.

The Lord Chancellor has made the following appointments with regard to the business of the Chancery Division :

Mr. Justice MORTON to be the Appeal Tribunal constituted under s. 92A of the Patents and Designs Act, 1907.

Mr. Justice FARWELL to be the Judge for the duties imposed by r. 15 (2) of the Public Trustee Rules, 1912.

Mr. Justice FARWELL to be the single Judge for the purpose of hearing such appeals under Ord. 54D of the Rules of the Supreme Court as are to be heard and determined by a single judge ; and Mr. Justice FARWELL and Mr. Justice MORTON to be the two Judges constituting a Divisional Court for the purpose of hearing and determining such appeals under Ord. 54D as, in accordance with the provisions of that Order, are to be heard and determined by a Divisional Court of the Chancery Division.

The Secretary of State for India and Burma has appointed Sir KENNETH MCINTYRE KEMP to be his Legal Adviser in succession to Sir Herbert Grayhurst Pearson, who retired on 1st December.

Mr. Justice HENN COLLINS has been elected Treasurer of the Middle Temple for the ensuing year.

LORD ROCHE has been elected Treasurer of the Inner Temple for the year 1939, and Sir JOSEPH PRIESTLEY, K.C., has been elected Reader for the Lent Vacation. Mr. Justice ASQUITH, Mr. GERALD DODSON (Recorder of the City of London), Mr. J. G. TRAPNELL, K.C., Mr. MAURICE HEALY, K.C., and Mr. G. B. MCCLURE have been elected Masters of the Bench of the Inner Temple.

Mr. A. Andrewes Uthwatt has been elected Treasurer of Gray's Inn for the year 1939 in succession to Lord Atkin, who has been elected Vice-Treasurer for the same period.

Mr. B. C. Harward, solicitor, a member of the firm of Messrs. Caunter, Venning & Harward, of Liskeard, Cornwall, has been appointed Town Clerk of Liskeard in succession to the late Mr. R. A. Peter. Mr. Harward, who was admitted in 1931, has for some years past been Clerk to the Justices for the Borough of Liskeard and for the Division of West Cornwall.

Mr. W. K. Morris, Deputy Town Clerk of Wrexham, has been appointed Clerk of the Whitstable Urban District Council. Mr. Morris was admitted a solicitor in 1934.

Notes.

Mr. Robert Norman William Blake, of Magdalen College, Oxford, has been elected Eldon Scholar.

The University of London Law Society will hold a joint debate with University College Union Society at University College on Tuesday, 6th December, at 8 p.m.

The directors of The National Guarantee & Suretyship Association, Limited, have appointed Mr. John Cook, W.S., to a seat on the Head Office Board in place of the late Mr. Adrian H. Cook, W.S.

The Ministry of Health has sent a circular to local authorities reminding them that for compensation to be payable for any holding of coal, it will be necessary under the Coal Act, 1938, for the coal to be registered and for a claim for compensation to be made.

At the conclusion of a trial at the Central Criminal Court last week Mr. Justice Asquith said: "I think it proper to say that the prisoner has been represented by eminent counsel and solicitors, all of whom have acted under the Poor Persons' Procedure, accepting only purely nominal remuneration. Such service is often rendered by the Bar, but it is not often known or recognised, and I think it ought to be known."

The following awards have been made at the Inner Temple: Entrance Scholarships of 200 guineas a year for three years—Mr. A. R. Campbell, Mr. P. Hague and Mr. J. R. B. Smith. Yarborough-Anderson Scholarships of £100 a year for three years: Mr. J. B. Bransbury and Mr. A. W. G. Kean. Profumo Prizes of 100 guineas: Mr. F. W. I. Barnes, Mr. D. J. Morey, Mr. C. Levy and Mr. W. A. Turnbull. A Pupil Studentship of 100 guineas: Mr. C. Levy.

A further new office was opened by the Midland Bank Executor and Trustee Company on 1st December. This office, which is the second to be established by the Company in the West End of London, is situated over the branch of the Midland Bank at 128 New Bond Street, W.1, and is managed by Mr. O. C. Gunnell, who hitherto has been in charge of the Company's branch opened in 1935 at 16 Regent Street, S.W.1. Mr. W. E. de Faye, manager of the Leicester office, has succeeded Mr. Gunnell at Regent Street.

Court Papers.

Supreme Court of Judicature.

Rota of Registrars in Attendance on

Date.	Emergency Rota.	Appeal Court No. I.	Group II. Mr. Justice Luxmoore. Witness Part I.	Mr. Justice Farwell. Non-Witness.
	Mr.	Mr.	Mr.	Mr.
Dec. 5	Jones	More	*Andrews	Ritchie
„ 6	Ritchie	Hicks Beach	*Jones	Blaker
„ 7	Blaker	Andrews	*Ritchie	More
„ 8	More	Jones	Blaker	Hicks Beach
„ 9	Hicks Beach	Ritchie	More	Andrews
„ 10	Andrews	Blaker	Hicks Beach	Jones
	Group II. Mr. Justice Morton. Witness Part II.	Mr. Justice Bennett. Witness Part I.	Mr. Justice Crossman. Witness Part II.	Mr. Justice Simonds. Non-Witness.
	Mr.	Mr.	Mr.	Mr.
Dec. 5	*Jones	*Blaker	More	Hicks Beach
„ 6	*Ritchie	*More	Hicks Beach	Andrews
„ 7	*Blaker	*Hicks Beach	Andrews	Jones
„ 8	*More	*Andrews	Jones	Ritchie
„ 9	*Hicks Beach	*Jones	Ritchie	Blaker
„ 10	Andrews	Ritchie	Blaker	More

*The Registrar will be in Chambers on these days, also on the days when the Court is not sitting.

Stock Exchange Prices of certain Trustee Securities.

Bank Rate (30th June, 1932) 2%. Next London Stock Exchange Settlement, Thursday, 8th December 1938.

	Div. Months.	Middle Price 30 Nov. 1938.	Flat Interest Yield.	‡ Approximate Yield with redemption
ENGLISH GOVERNMENT SECURITIES			£ s. d.	£ s. d.
Consols 4% 1957 or after	FA	107½	3 14 5	3 8 9
Consols 2½%	JAJO	71½	3 9 11	—
War Loan 3½% 1952 or after	JD	99	3 10 8	—
Funding 4% Loan 1960-90	MN	108¾	3 13 7	3 8 1
Funding 3% Loan 1959-69	AO	95	3 3 2	3 5 3
Funding 2¾% Loan 1952-57	JD	93⅛	2 18 10	3 4 3
Funding 2½% Loan 1956-61	AO	87¾	2 17 0	3 5 10
Victory 4% Loan Av. life 21 years	MS	107⅜	3 14 3	3 9 6
Conversion 5% Loan 1944-64	MN	110⅜	4 10 7	2 15 0
Conversion 3½% Loan 1961 or after	AO	99½	3 10 4	—
Conversion 3% Loan 1948-53	MS	99½	3 0 4	3 0 11
Conversion 2½% Loan 1944-49	AO	96½	2 11 10	2 18 2
National Defence Loan 3% 1954–58	JJ	97¾	3 1 4	3 3 0
Local Loans 3% Stock 1912 or after	JAJO	85	3 10 7	—
Bank Stock	AO	329½	3 12 10	—
Guaranteed 2¾% Stock (Irish Land Act) 1933 or after	JJ	81	3 7 11	—
Guaranteed 3% Stock (Irish Land Acts) 1939 or after	JJ	87	3 9 0	—
India 4½% 1950-55	MN	111½	4 0 9	3 4 10
India 3½% 1931 or after	JAJO	91	3 16 11	—
India 3% 1948 or after	JAJO	77	3 17 11	—
Sudan 4½% 1939-73 Av. life 27 years	FA	105	4 5 9	4 3 8
Sudan 4% 1974 Red. in part after 1950	MN	105½	3 15 10	3 8 8
Tanganyika 4% Guaranteed 1951-71	FA	107	3 14 9	3 5 9
L.P.T.B. 4½% "T.F.A." Stock 1942-72	JJ	104½	4 6 1	2 18 4
Lon. Elec. T. F. Corpn. 2½% 1950-55	FA	90½	2 15 3	3 4 9
COLONIAL SECURITIES				
Australia (Commonw'th) 4% 1955-70	JJ	99½xd	4 0 5	4 0 7
Australia (Commonw'th) 3% 1955-58	AO	85½	3 10 2	4 1 5
*Canada 4% 1953-58	MS	108½	3 13 9	3 5 5
*Natal 3% 1929-49	JJ	99	3 0 7	3 2 6
New South Wales 3½% 1930-50	JJ	94½	3 14 1	4 1 8
New Zealand 3% 1945	AO	88	3 8 2	5 4 8
Nigeria 4% 1963	AO	107½	3 14 5	3 10 10
Queensland 3½% 1950-70	JJ	92½	3 15 8	3 18 4
*South Africa 3½% 1953-73	JD	100½	3 9 8	3 9 1
Victoria 3½% 1929-49	AO	93½	3 14 10	4 5 0
CORPORATION STOCKS				
Birmingham 3% 1947 or after	JJ	84	3 11 5	—
Croydon 3% 1940-60	AO	94	3 3 10	3 8 0
*Essex County 3½% 1952-72	JD	100xd	3 10 0	3 10 0
Leeds 3% 1927 or after	JJ	83	3 12 3	—
Liverpool 3½% Redeemable by agreement with holders or by purchase	JAJO	97½	3 11 10	—
London County 2½% Consolidated Stock after 1920 at option of Corp.	MJSD	70½	3 10 11	—
London County 3% Consolidated Stock after 1920 at option of Corp.	MJSD	82	3 13 2	—
Manchester 3% 1941 or after	FA	83	3 12 3	—
Metropolitan Consd. 2½% 1920-49	MJSD	96	2 12 1	2 18 7
Metropolitan Water Board 3% "A" 1963-2003	AO	85	3 10 7	3 12 0
Do. do. 3% "B" 1934-2003	MS	86	3 9 9	3 11 0
Do. do. 3% "E" 1953-73	JJ	96	3 2 6	3 3 10
*Middlesex County Council 4% 1952-72	MN	106	3 15 6	3 9 0
* Do. do. 4½% 1950-70	MN	110	4 1 10	3 9 4
Nottingham 3% Irredeemable	MN	83	3 12 3	—
Sheffield Corp. 3½% 1968	JJ	101½	3 9 0	3 8 4
ENGLISH RAILWAY DEBENTURE AND PREFERENCE STOCKS				
Gt. Western Rly. 4% Debenture	JJ	99½	4 0 5	—
Gt. Western Rly. 4½% Debenture	JJ	109½	4 2 2	—
Gt. Western Rly. 5% Debenture	JJ	122½	4 1 8	—
Gt. Western Rly. 5% Rent Charge	FA	118½	4 4 5	—
Gt. Western Rly. 5% Cons. Guaranteed	MA	107	4 13 5	—
Gt. Western Rly. 5% Preference	MA	80	6 5 0	—
Southern Rly. 4% Debenture	JJ	100½	3 19 7	—
Southern Rly. 4% Red. Deb. 1962-67	JJ	106½	3 15 1	3 11 9
Southern Rly. 5% Guaranteed	MA	114½	4 7 4	—
Southern Rly. 5% Preference	MA	91½	5 9 3	—

* Not available to Trustees over par.
‡ In the case of Stocks at a premium, the yield with redemption has been calculated at the earliest date; in the case of other Stocks, as at the latest date.